

# CHARTERED SECRETARY

THE JOURNAL FOR CORPORATE PROFESSIONALS



INTERVIEW WITH  
**C PARTHASARATHY**



Focus on

## Valuation



**THE INSTITUTE OF  
Company Secretaries of India**

**भारतीय कम्पनी सचिव संस्थान**

**IN PURSUIT OF PROFESSIONAL EXCELLENCE**

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*सत्यं वद। धर्मं चर।*

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# 05

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ISSN 0972-1983

# CHARTERED SECRETARY

[ Registered under Trade Marks Act, 1999 ]

Vol. : XLVIII ■ No. 06 ■ Pg 1-124 ■ June-2018

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QR Code/Weblink of Chartered Secretary Journal

<https://www.icsi.edu/JournalsBulletins/CharteredSecretary.aspx>



## Annual Subscription

'Chartered Secretary' is normally published in the first week of every month. ■ Non-receipt of any issue should be notified within that month. ■ Articles on subjects of interest to company secretaries are welcome. ■ Views expressed by contributors are their own and the Institute does not accept any responsibility. ■ The Institute is not in any way responsible for the result of any action taken on the basis of the advertisements published in the journal. ■ All rights reserved. ■ No part of the journal may be reproduced or copied in any form by any means without the written permission of the Institute. ■ The write ups of this issue are also available on the website of the Institute.

## Edited, Printed & Published by

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 Website : <http://www.icsi.edu>

Mode of Citation: CSJ (2018)(06/--- (Page No.)



**Design & Printed at**

**M. P. Printers**

B-220, Phase II, Noida-201305  
 Gautam Budh Nagar, U. P. - India  
[www.mpprinters.co.in](http://www.mpprinters.co.in)





1. Inaugural Session of the Golden Jubilee Year National Conference of Practising Company Secretaries (19th Edition) held at Mumbai - Standing on the dais from Left: CS Dinesh Chandra Arora, CS Ashish Garg, CS Ashish C. Doshi, CS Makarand Lele, Dr. Satya Pal Singh (Hon'ble Minister of State for Human Resource Development; (Higher Education) Government of India), Ajay Tyagi (Chairman, SEBI), CS Ahalada Rao V., CS Vineet Chaudhary, CS Hitesh Kothari.
- 2-4. Address at the Inaugural Session by CS Makarand Lele, Ajay Tyagi and Dr. Satya Pal Singh.
- 5-6. Release of ICSI publications titled Model Governance Code of Meeting of Gram Panchayat in Marathi and Company Secretary in Practice- Ready Reckoner.





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7. Session on Diligence Report on Governance for Banks, Regulatory Regime & Compliance in Capital and Financial Markets - Standing from Left: CS Mahavir Lunawat, B.P. Vijayendra (Principal CGM (Retd.), RBI), CS Pavan Kumar Vijay, CS Makarand Lele, J.N. Gupta (Founder and Managing Director, Stakeholders Empowerment Services), Girish Joshi (Senior General Manager, BSE Limited) and CS Ashish Karodia.
8. Session on Emerging Areas of Practice (IBC, Valuation and RERA) - Sitting on dais from Left: Dr. Mamta Suri (Executive Director, IBBI), CS Rammohan Bhawe (MD, Consultant IFRS), Ramesh Prabhu (Chartered Accountant, Mumbai) and CS Chetan Patel.
9. Session on Companies Act & Corporate Governance: An Insight of Risk and Compliance Management - Sitting on the dais from Left: Suhas Tuljapurkar (Managing Partner, Legasis Partners), Gopal Krishna Agarwal (Government Nominee on the Central Council of ICSI), Narayan Shankar (Vice President and Company Secretary, Mahindra and Mahindra Ltd.), Vijay Kumar Jhalani (Government Nominee on the Central Council of ICSI) and CS Praveen Soni.
10. Session on Traits of Appearance at Tribunals & Quasi-judicial authorities - Sitting on the dais from Left: CS Vineet Chaudhary, Mukul Kumar Shrawat (Judicial Member, NCLT), B S V Prakash Kumar (Judicial Member, NCLT), Nitin Potdar (Partner, J.Sagar Associates, Advocates & Solicitors) and CS Prakash K. Pandya.
11. Session on GST, DTC and Internal Audit- The Way forward- Sitting on the dais from Left: CS Ashish Garg, Avinash Poddar (AP Institute of Training and Learning, Surat), Mukund M. Chitale (Managing Partner, Mukund M. Chitale & Co.), Rajesh Sharma (Government Nominee on the Central Council of ICSI) and CS Amit Jain.
12. Session on Practitioners' Changing Dimensions: Governance and Opportunities - Sitting on the dais from Left: CS Dinesh Chandra Arora, CS Ashish C. Doshi, R. Narayanswamy (Professor, IIM, Bangalore), CS Makarand Lele, P.R. Ramesh (Chairman, Deloitte India), CS Ahalada Rao V and CS Hitesh Kothari.





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13. Science Olympiad Foundation (SOF) 20th International Awards Ceremony- Sitting on the dais from Left: CS Ahalada Rao V., Mahabir Singh (Founder & Director of SOF), P P Chaudhary (Hon'ble MoS for Law & Justice and Corporate Affairs), Professor Y.S. Rajan( Former Chairman, NIT Manipur Distinguished Prof. at ISRO) and Michael King( Director Examinations, India, British Council).
14. Science Olympiad Foundation (SOF) 20th International Awards Ceremony - Group photo of the award winners with the dignitaries.
15. Award of ICSI Signature Gold Medal during 44th Annual Convocation ceremony of GNDU at Amritsar - CS Vineet Chaudhary and Ankur Yadav congratulating Kirandeep Kaur (Topper of B.Com for the year 2017 of Guru Nanak Dev University, Amritsar) on receiving ICSI Signature Gold Medal.
16. Meeting with Vice Chancellor of Rani Durgavati Vishwavidhyalaya Jabalpur for ICSI Signature Award –Standing from Left - CS Anurag Gangrade, Kapil Deo Mishra (Vice Chancellor Rani Durgavati Vishwavidhyalaya, Jabalpur), CS Ashish Garg and CS Ashish Karodia.





17. UP State Conference (Host: Kanpur Chapter) on Understanding the Contemporary Corporate Laws – Standing from Left: CS Vaibhav Shukla, CS Kushal Saxena, CS Paras Mittal, CS Rajiv Bajaj, CS Ranjeet Pandey, CS Sameer Shukla, Manoj Kumar Agarwal (Managing Director, Kanpur Plastipack Limited), CS Pradeep Debnath, CS Nitesh Kumar Sinha & CS Ankur Srivastava seen releasing Souvenir.
18. NIRC - One Day Seminar on Spread the Wings of Professionals under NCLT & IBC jointly organised with NIRC-ICAI – CS Makarand Lele and others seen presenting the memento to Hon'ble Justice S J Mukhopadhaya (Chairperson, NCLAT). Also seen in the picture CS Pradeep Debnath, CA Rajesh Sharma, CS Rajiv Bajaj, CS Ranjeet Pandey, CS Dinesh Chandra Arora, CS Manish Gupta, CS Hitender Mehta and CA Pankaj Periwal.
19. Haryana State Conference (Host: Faridabad Chapter) on Contemporary Law & Challenges for Corporate In India – group photo – seen among others CS Pavan Kumar Vijay, CS Pradeep Debnath, CS Nitesh Kumar Sinha, CS Ranjeet Pandey, CS Dhananjay Shukla, CS Manish Gupta and CS Vanita Arora.
20. Session on Legal Services: Compliance Challenges under Emerging Regulation & Technology Disruption held at Mumbai - Sitting on the dais from Left: Kshama A Loya (Sr. Member, Nishith Desai & Associates), CS Ahalada Rao V., Anup Wadhawan, Shafaq Urzee Sapre (Exec. Partner, Lakshmikumaran & Sridharan), Rahul Dwarkadas (Partner, Veritas Legal) and Rupali Bandopadhyay (Partner, Edifice Legal).



*“The greatest threat to our planet is the belief that someone else will save it.”*

~ Robert Swan



Dear Professional Colleagues,

**E**ach new month of the Golden Jubilee Year is bestowing upon us, reasons to celebrate, moments to cherish, goals to achieve and promises to fulfil. The month gone by and those to follow are no different. And while the focus of the Institute is on the regulation, development, training and adoption of a holistic approach towards all the members of the Institute, these summer months were found to be a bit more tilted towards the practising side.

The month of May witnessed the celebration of the Golden Jubilee Year National Conference of Practising Company Secretaries in the heart of the Trade Hub, the Business hub of the nation, Mumbai. Marked by the presence of the who's who the political and regulatory world, the event was an epiphany as far as the issues and challenges of the practising world are to be deliberated. And yet in the same breath I would not shy away from feeling proud of this strong brigade of professionals who not only take forth the torch of good governance via the non-financial audit entrusted with them but are extending their boundaries, testing new waters and reaching and achieving new milestones...

All said and done, there are expectations galore. Both, the chief guest and the guest of honour brought with their words, a realisation... Realisations of the tasks to accomplish, the structures to strengthen and images to build, maintain and cherish. Needless to say, the words of both the guests were enriching and illuminating.

While on one hand, Dr. Satya Pal Singh, Hon'ble Minister of State for HRD (Higher Education), highlighted and recognised the role of Company Secretaries in government initiatives, the motto adopted and the significance of its adoption in the modern day corporate scenario; on the other, the guidance given by Shri Ajay Tyagi, Chairman, SEBI regarding the role expected of Secretarial Audit and Auditors as regards the realities will prove as a guiding factor for Company Secretaries to build future strategies in exhibiting further professional excellence in performing duties as secretarial audit for listed companies.

Understanding the significance of Secretarial Audit in the professional arena of Company Secretaries and the initial hiccups facing them, the Institute has not only rolled out the Guidance Note on Secretarial Audit but is also continuously revising and revisiting the same to meet the dynamic requirements of the legislations and corporates. ICSI has also developed Compliance Management & Office Configurator (CMAC) tool which enlists all the general and industry specific laws verified during Secretarial Audit. It even helps identify the laws applicable to a company operating in a particular industry and its relevant compliances. Apart from the publication, several seminars and workshops have been organized by the ICSI on the Secretarial Audit since the enforcement of its provisions for capacity building of the members so as to enable Secretarial Auditors to meet the



expectations of the stakeholders. These Seminars and workshops have witnessed the partnership and presence of both stock exchanges on occasions more than one.

That said for the month gone by, mention seminars and events, and the Institute has a host of events lined up not just for its members but other significant role players of the corporate arena as well. While the celebrations of the Golden Jubilee Year PCS Day on the 15th of June, 2018 shall emphasize entirely on deliberations on the existing recognitions as well as emerging areas of practice for PCS, the recent developments with respect to GST, SEBI along with the Peer Review Mechanism and its benefits for the practising members of the fraternity, the days to follow shall witness Team ICSI focussing and targeting its energies and efforts towards other significant managerial personnel expected to be significant role-players in the governance scenario of the corporate sector. From CEOs to COOs to CFOs to Directors on the Boards, you name it and we have encased them all. The idea and the intent is not to reiterate their roles and responsibilities which we firmly believe that they have knowledge of, but to strengthen and equip them with the existing legislations, bring about a sensitization towards the pressing issues and hurdles in the arena of governance and seek support in this regard.

The recent amendments in SEBI (LODR) Regulations, 2015, while opening up new opportunities to professionals have also altered the provisions pertaining to requirement of appointment of Independent Directors and Women Directors on the boards of listed entities. I am sure our professionally qualified and trained members will surely take benefit of this and will serve the Industry in the form Independent Directors. On this background, I am pleased to share that ICSI GRKF had successfully arranged a one day training course for the directors at NSE, Mumbai. We plan to have more such training sessions in near future. ICSI is also in a process of designing a comprehensive training module for Independent directors.

The **'National Conclave on Ethics and Governance'** scheduled to be held in the heart of the Spiritual Capital of Andhra Pradesh', Tirupati on 13th and 14th July, 2018 on the theme **"Professional Ethics: Need of the hour"** lines up perfectly as one such event centred on reiterating not just good or better but best governance across the long and short, the length and breadth of the nation.

Needless to say, while strengthening the existing brigade of professionals holding a variety of designations, the Institute has been constantly on a hunt for newer opportunities and creation of

endless possibilities for the professionals, including but not limited to the members of this Institute. In one such endeavour, the Institute had incorporated the ICSI Registered Valuers Organisation, and has secured registration with IBBI in all 3 asset classes. I am extremely pleased and heartened to share that we are launching the **Educational Course on Valuation of 'Securities or Financial Assets'**.

Valuation, while might be an area of expertise for many but for many more it might seem as a distant dream, one which might be portrayed as a land to be treaded by a chosen few. To all those who had been eagerly waiting for the launch of the Course so as to pursue their professional activities with greater zest and zeal, I would say "Welcome aboard". And to all those who might be anxious about this domain as an alien province, I would urge you to push beyond your boundaries, test your limits and give your capabilities a try and who knows you might find your true calling here itself. For as a famous quote reads, "When opportunity knocks, don't let fear hold you back. Open the door and embrace the opportunity that has come forth".

Discuss governance in full fervour and the mention of social responsibility is inevitable. While the month of June is when the Northern hemisphere witnesses summer solstice, it is in this month only that the world gets together to celebrate its surroundings and its components. The World Environment Day on 5th of June witnessed a conscious approach of the public including the professionals elevating the environment and its protection to a high podium. But the need of the hour is to not just talk about it but make cognizant efforts in this regard. And while I began my address with the words of the first person in the history to walk to both the North and South Pole emphasizing individual role in saving the world, I would reiterate the same with another note worth ponderance. They say "Professionalism is an attitude, not a time commitment" and it is high time that while pursuing our corporate responsibilities we made conscious efforts to diligently act towards our professional responsibilities towards not just the nation or the world but the entire planet and its constituents...

Happy Reading!!

Best wishes.

Yours Sincerely



June 04, 2018  
New Delhi

CS Makarand Lele  
President, ICSI

# Recent Initiatives taken by ICSI

In furtherance to details published in the Chartered Secretary, we are pleased to share the following added initiatives taken by the Institute during the month of May, 2018:

## 1. Golden Jubilee Year – National Conference of Practising Company Secretaries (19th Edition)

National Conference of the Practising Company Secretaries is one of the flagship events of the Institute towards capacity building of its members. It is an annual congregation of members in practice for capturing the contemporary trends in the related field of knowledge and practice. This year, in commemoration of 50 years of Institutes' journey, the Golden Jubilee Year - National Conference of Practising Company Secretaries (19th Edition) was magnificently inaugurated at The LaLit Mumbai, on May 18-19, 2018 in the graceful presence of Dr. Satyapal Singh, Hon'ble Union Minister of State for HRD, government of India, as Chief Guest and Shri Ajay Tyagi, Chairman SEBI as the Guest of Honour. This two days Conference on the theme of 'PCS: A Value Driven Professional', has made successful deliberations on the integral role of professionals in the emerging trends of governance and compliance.

## 2. Publications released at the Golden Jubilee Year – National Conference of Practising Company Secretaries (19th Edition)

In addition to the path breaking deliberations capturing cerebral glimpse of theme and sub-themes, the two days congregation of Practising Company Secretaries has also witnessed the release of various publications of the Institute in different sessions of the Conference, a list of which is as under:

- *Company Secretary in Practice: Ready Reckoner* – With a view to guide the practicing members of the Institute to effectively shoulder the responsibilities under the emergence of newer opportunities and to act independently to provide value added services to their clients, Institute has brought out this publication as a Ready reckoner for Company Secretaries in Practice. The publication aims to update the readers with emerging regulatory framework, advancements in information technology and developments in the profession.
- *Exposure Draft of ICSI Guidance on Diligence Report on Governance For Banks* – The Core

Group for Guidance Note on Diligence Report for Banks prepared this guidance taking into consideration that between 2009 (when the earlier guidance note was prepared) and 2018, there have been several structural changes like enactment of Companies Act 2013, replacement of Listing Agreement with SEBI LODR 2015, secretarial audit being made mandatory for companies of certain size, etc. It is also expected that there would be the stipulation of a minimum number of years of experience for a practicing company secretary who may be entrusted with the responsibility of issuing the diligence report on governance of a borrowing company for use of lending institutions. Accordingly, the Task Force attempted to prepare the 'guidance' for this 'Diligence Report' in a precise format highlighting critical issues to be addressed rather than elaborating and repeating the provisions of law and other procedural aspects which the professional is already fully aware of.

- *Guidance Note on Secretarial Audit (4th Edition)* – The concept of Secretarial Audit received due recognition in the Companies Act, 2013 wherein it was made mandatory for both listed companies and another specified set of companies on the basis of their financials. Keeping in sight the future of Secretarial Audit, the Institute has revised the Guidance Note on Secretarial Audit and released its Fourth Edition. The publication highlights the basics of Secretarial Audit along with providing an insight into the skills required, the checklists, etc. Further, significant focus has also been placed upon Secretarial Standards, board processes and for the benefit of the professionals, a specimen Qualified Secretarial Audit Report has also been included in the publication.
- *GST Educational Series* – GST Educational Series is a one spot compilation of the daily series titled GST Educational Series to facilitate the readers to augment their understanding of the aspects related to GST and continue to be a source of support and enhance their commitment for the subject.
- *GST - Simplified Approach and Practical Guide for GST Accounts Assistant* – Covering the most recent amendments up to April 30, 2018, the publication titled as 'GST – A Simplified Approach and Practical Guide for GST Accounts Assistant' shall prove to be an



important facilitator for the prospective GST Accounts Assistants in understanding the intricacies of GST.

- *Practical Aspects of Insolvency Law* – This extensive publication would surely be of assistance to the resolution professionals as regards the manner of applying to the National Company Law Tribunal for pursuing the process of resolution and also in identification of significant aspects, documents involved, critical issues of resolution process settled through landmark judgements, etc.
- *Souvenir: Golden Jubilee Year National Conference of Practising Company Secretaries (19th Edition)* – Souvenir containing a theme paper and various articles on the theme and sub-themes of the conference was released to apprise the readers with the facts and facets along with the advanced knowledge in the emerging areas of practice related to compliance and governance.
- *Transfer Pricing* – Law relating to Transfer Pricing is very dynamic. The Finance Act, 2012 made significant changes in the transfer pricing regulations including the introduction of the provisions related to Advance Pricing Agreement, Expansion of Transfer Pricing Officers' Power, Amendment related to Penalties and alike. Further a new section 92BA has also been inserted which covers specified domestic transactions within the ambit of transfer pricing regulation. In this background and understanding the role of Company Secretaries as the Principal Officer of the company, the Institute has brought out this publication on Transfer Pricing, to apprise the professionals on various dimensions of Transfer Pricing, so as to enable them to guide the industry efficiently.

### 3. Global Exhibition on Services – The India Opportunity

The Institute participated in the Global Exhibition on Services (GES) organized by Department of Commerce, Ministry of Commerce and Industry in partnership with Government of Maharashtra, Service Export Promotion Council and Confederation of Indian Industry, during May 15-18, 2018 at Mumbai. The exhibition, inaugurated by Shri Ram Nath Kovind, Hon'ble President of India has launched 12 Champion Service Sectors. The Institute, in addition to setting up of ICSI Stall at the exhibition showcasing

the services provided by the Institute and the professionals, has also represented at the session 'Legal Services: Navigating Compliance Challenges under the ever evolving landscape of Governance, Technology Disruptions and Emerging Regulations' on May 16, 2018.

### 4. First Batch of Pre-Registration Educational Course

Regulation 5(b) of IBBI (Insolvency Professional) Regulations, 2016, as amended with effect from April 01, 2018 provides that an individual shall be eligible for registration as insolvency professional, if he has completed a pre-registration educational course as may be required by the Insolvency and Bankruptcy Board of India (IBBI), from an Insolvency Professional Agency after his enrolment as a professional member. Accordingly, the First Batch of 50 hours Pre Registration Educational Course was organized by ICSI – Institute of Insolvency Professional in association with Insolvency Professional Agency of ICAI and ICoAI on May 28, 2018 at Noida.

### 5. ICSI GST Newsletter

The Institute is regularly bringing out a monthly newsletter dedicated to the Goods & Services Tax (GST). Standing tall, as one of the effective initiative for building capacity under the new indirect tax regime and upholding the "One Tax One Nation" motto of the Government of India, this ICSI – GST Newsletter has been published Fourteen (14) volumes so far, with May issue being the latest issue.

### 6. ICSI GST Educational Series

Furthering our capacity building initiative in the regime of GST, Institute has also started a daily GST Educational Series. The series, which have been successful and academically useful, saw the publication of more than Two Hundred and Forty Five (245) issues so far. All the issues of GST Educational Series are available on the GST Corner of the Institute's website at <https://www.icsi.edu/GSTEducationalSeries.aspx>.

### 7. ICSI GST Point

In order to support the government for ensuring the effective implementation of GST Laws and to advance various initiatives of the Institute while enlightening the public at large about the diverse facts and facets of Goods and Services Tax (GST), the Institute launched a GST Point as a uniform platform to reply to the queries, difficulties and challenges faced by consumers, manufacturers, traders, MSMEs, public, professionals, etc. in understanding and implementation of the Goods

and Services Tax Laws. So far more than Eighty (80) sessions of GST Point have successfully been completed. The same has been receiving a tremendous response from all stakeholders. The queries received and answered by experts cover a wide range of topics including registration, filing, and input tax credit along with other GST modalities.

#### 8. ICSI – GST App

In order to provide a ready reckoner and update in latest news, articles, regulations and various publications of the Institute on GST, the Institute launched an ICSI GST App for public at large. The App which is available on android platform and can be downloaded from Google Play Store as well as iOS has more than 18782 active users.

#### 9. Webcast for the Students appearing in CS Examinations for June, 2018

To motivate the students for subsuming their best while writing the examinations in a stress-free milieu and also to resolve their queries related to exams, the Institute organized a Webcast for the Students appearing in CS Examinations for June, 2018.

The webcast addressed by the panel of experts including the senior officials of the Institute deliberated in detail on Examination related processes, Academic queries, Training requirements, E-learning, Admit Card related issues, etc.

#### 10. Career Counselling Portal

With a view to strengthen the visibility of Profession across India and also to apprise the budding professionals on the opportunities, the Institute launched a Career Counseling portal. The portal has been made accessible to all Regional Councils, Chapters, and Career Counseling Officers in order to ensure uniformity in execution of activities pertaining to Career Awareness pan India.

#### 11. ICSI Signature Award Scheme

The Institute has launched ICSI Signature Award Scheme to felicitate the top rank holders in

B.Com. Final Examinations in reputed universities and also specialized programmes/ papers of IITs / IIMs with the award of a Gold Medal and a Certificate. So far, ICSI Signature Award has been instituted in Nineteen (19) Universities with Thirteen (13) Gold Medals being awarded under this scheme.

During the month of May, 2018 one gold medal was awarded to the topper of Guru Nanak Dev University, Amritsar, Punjab.

#### 12. ICSI - Study Centre Scheme

In registering an efficacious outcome of Institutes' initiative to break the distance barrier for students belonging to cities / locations in which the representative offices of the Institute are not in existence, Seventy Two (72) Study Centres have been established so far in collaboration with reputed colleges in different locations including the remote areas like Andaman & Nicobar Islands, Lakshadweep, and Pondicherry.

In the month of May 2018, an additional study centre was opened at Nachiketa Institute of Management, Power Grid, Jabalpur, Madhya Pradesh

#### 13. Restructuring of Student Page at the Website

The Institute is dynamic in providing paramount services to all the stakeholders in an alignment with the contemporary times. Accordingly, in order to serve our students at its best, the Institute initiated to restructure the Student Page at the website of the Institute with the pictures and symbols to facilitate the stakeholders. With such restructuring the page would be a one spot source in assisting the students while easily navigating and finding the desired information.

#### 14. Issue of CS Exam – Admit Cards

In the wake of Company Secretary – June 2018 examination for all the programs, the Institute released the admit cards for the students appearing in June 2018 examination, which were made easily downloadable from the website of the Institute.

***“Company Secretaries now need to be the torchbearers of Compliance in assisting the Board. My belief is that Company Secretaries should look beyond the conventional role, and should actively participate as members of the senior management team.”***



## **C PARTHASARATHY**

*In Conversation with Preeti Kaushik Banerjee  
Director (Corporate Communication), The ICSI*

**G**iven a chance to start all over again, he would go for a less stressful assignment and yet the man is on a spree to alter the very focus of his enterprise from being a financial services group to being a services group.

CS C Parthasarathy, Chairman & Managing Director, Karvy Group in a conversation with Ms. Preeti Kaushik Banerjee, Director, Directorate of Corporate Communication, while coming across as a pure optimist as regards the future of the nation opines that the members of the Institute should be equipped with understanding of the highest order of the nuances of various regulations...

**Karvy is one of the leading financial services conglomerate in the country and is ranked among the top five across its business segments. How has the journey been? What was the biggest challenge that you faced?**

The journey of the last thirty and odd years has been exciting, and being in financial services, the challenges are many. For us, the biggest challenge that we face is availability of high-quality professionals and compliance on an on-going basis, in a highly regulated environment.

**How would you describe the phenomenal growth Karvy has attained?**

I do not think that the growth of Karvy has been phenomenal. We have grown reasonably well, but there have been others who have done much better. I think our growth has been a result of continuous focus, hard work, seizing opportunities that have come our way, and adapting changes in technology ahead of others. Our philosophy has been to grow in size and always look at business of scale. Over time, we will be more of a services group than a financial services group.

**The journey of Indian financial markets has been of many shades over the last decade. We have seen a lot of progress, but also significant pauses. The fastest free market economy is now face-to-face with the challenges and opportunities. Where do you see the Indian economy at 2020?**

India is already the fastest growing economy in the world, and among the top 10 economies. I guess it will consolidate its position, and I think it will be among the top 5 economies of the world by the year 2020. While there will be challenges, I think that the economic growth of this country is now irreversible.

**How do you look at the current status of merchant banking industry in the country? What according to you should be the roadmap as far as the governance scenario is concerned?**

Investment/merchant banking industry in India is growing very fast, and the number of companies accessing the capital market, as also the size of these offerings have become pretty large. While we have a couple of very strong domestic investment banks, international investment banks are in a position to provide appropriate service to large fund raisers. In my view, the governance scenarios as far as capital markets are concerned, is extremely strong and robust, and the regulation is very tight. Amongst the developing economies, I would like to believe that our governance is among the best.

**With the much talked about bank frauds, issues around conduct and culture continue to be a major challenge for financial services**





**A company secretary is now a KMP. The expectations of a KMP are higher than that of a position which was more statutory in nature. Company Secretaries now need to be the torchbearers of Compliance in assisting the Board.**

**organisations. High-profile instances of misconduct demonstrate that firms will have to widen their focus and look at enterprise risk governance more broadly. What is your take on such cases? How can enterprise risk governance and culture be strengthened?**

Anywhere in the world, frauds and other challenges exist amongst financial services organisations. There are frauds, or issues of non-compliance even in the most developed of the economies. There are penalties that are levied upon the best of the firms in financial services. We have very strong regulators as far as SEBI and Reserve Bank of India are concerned, and my personal belief is that they are among the best in the world. The occurrence of frauds point out to systemic issues in a rapidly changing environment, and I do not think that this can cause any kind of a challenge to the growth of the economy. Corporate governance will continue to improve in India, and this is now being recognised as an item of top priority in the country. Culturally, we have acknowledged that Compliance and risk management are important components of a business enterprise, and a lot of improvements have been made in terms of reporting and compliance by corporates. The culture today is different from what it was a decade ago, and I would like to believe that this culture will keep improving over time. I do not see this as a challenge in future.

**Are investors worried over the current spate of financial frauds making headlines?**

Retail investors are the ones who are most affected

by the current spate of financial fraud. I would not call it a spate of financial frauds, because frauds are only a few, and failure of organisations are many. The failures of organisations are due to various reasons, including the downturn of the economy in the past. Overall, I believe that the impact of the present events is only short-term in nature.

**How do global investors see India vis-a-vis peers?**

Global investors believe that there is a greater governance, greater transparency, and a greater accountability in India, vis-a-vis other developing countries. The only challenge that global investors see in India is that there is a tremendous promise and that is not backed by appropriate performance. The attitude of global investors in India is now one of dealing with an independent and relatively mature market with a set of regulators. Overall, the global investors are comfortable investing in India.

**Cyber security and consumer data privacy continues to be a big concern for financial institutions. How can this be dealt with?**

Cyber security is a challenge across the world, and one of the risks of the rapid development of technology is lack of privacy. However, India is amongst the first lot of countries who have realised the importance and the challenge of cyber security and data privacy. SEBI has already formulated guidelines with respect to cyber security for large registrars and transfer agents, and I think the framework is already in place,

as far as the banking and NBFC sector is concerned. The most important issue here is awareness, and the awareness of cyber security in India has improved over the last one year. Once again, these are not long-term challenges.

**The corporate sector while being one of the most important keys for rapid economic growth is well equipped to learn from and experiment with the best practices adapted by global companies. What changes or transformation you think should be brought about in the Indian corporate sector to make India a major economic powerhouse in the world?**

In India, corporate governance has improved tremendously, over the last 5/10 years. We have had a new Companies Act, which is exhaustive as well as progressive, and I would like to believe that the initiation of best practices being adopted by Indian corporate has already commenced. I think that the regulations of all entities and all enactments have fast forwarded the implementation of best practices by various corporates. Once again, in terms of adoption of best practices and in terms of responsibilities of the Board of Directors, I think India is second to none.

**Keeping in sight the discussions until now on some of the most pressing issues in the Indian corporate sector, how would you as a Company Secretary summarize the governance scenario in the nation and the role played by the members of the Institute in strengthening the same?**

My personal belief is that the importance of corporate governance is increasing substantially. I have seen a considerable improvement in the quality of Company Secretaries, and I would like to believe that a number of Company Secretaries are now on a path of improving their exposure and knowledge. I



think that Company Secretaries should play a larger role in strengthening the governance system. Their understanding of the nuances of various regulations as also the business, should be of the highest order.

**One takeaway for the budding Company Secretaries.**

A company secretary is now a KMP. The expectations of a KMP are higher than that of a position which was more statutory in nature. Company Secretaries now need to be the torchbearers of Compliance in assisting the Board. My belief is that Company Secretaries should look beyond the conventional role, and should actively participate as members of the senior management team.



**Global investors believe that there is a greater governance, greater transparency, and a greater accountability in India, *vis-a-vis* other developing countries. The only challenge that global investors see in India is that there is a tremendous promise and that is not backed by appropriate performance.**

## Rapid Fire

- (a) Your best teacher in business: There are many; in fact all my large clients are my teachers
- (b) The must have quality in a leader: Courage and compassion
- (c) Favourite book: Kane and Abel
- (d) Favourite movie: Sound of Music
- (e) Hobbies : Gardening
- (f) Things you hate the most: There is nothing that I hate
- (g) If you were to start all over again: Choose a less stressful job/assignment

## Business Valuation in India – Beyond the Numbers

21

Pavan Kumar Vijay

Credible valuations are critical to the efficient working of the capital markets, businesses, government and all its stakeholders. With growing shareholder activism, importance of independent valuations is arising all over the world including India. Valuation of Securities or Financial Assets is critical for strategic business decisions including fund raising, M&A, Sale of businesses, Strategic business decisions like Family or Shareholders disputes, Voluntary value assessment or may be just to comply with certain regulatory or accounting requirements in India under RBI, Income Tax, Companies Act, SEBI Laws etc. Better Corporate Governance is also leading to requirement of independent Business Valuations. The Registered Valuer Rules governing the practice of valuation in India have now come into force. The IBBI is implementing these rules and RVOs have begun their educational courses. The registration of valuers needs to be done by 30th September 2018. Professionals including aspiring valuers should now look at their capacity building as Business Valuation is beyond the numbers.

## 27 FABLES of ESOP - Valuation of Stock Option Case Studies

25

Rammohan Bhawe

ESOP valuation is normally required for accounting. However, the age-old concept of human asset accounting will require a review of human assets valuation under Lev and Schwartz model to look at employee stock options even from the angle of pure valuation principles (leaving aside accounting definition) and then behavioural aspects of human being also come into picture with relative ease of retention for better brand companies than near equivalent competitors.

## Valuation Process for Asset Class: Securities or Financial Assets

29

Chander Sawhney

Valuation is the process of determining the “Economic Worth” of an Asset or Liability under certain “Assumptions and Limiting Conditions” and subject to the “Data” available on the “Valuation Date”. The valuation process includes understanding purpose of valuation, making information requisition to company considering the purpose of valuation, doing financial analysis and normalisation adjustments, understanding industry characteristics and trends, forecasting and validating company performance, considering and applying appropriate valuation approach and performing scenario analysis, value adjustments, documentation and reporting. It would be prudent to say that the valuation of securities or financial assets is beyond the numbers and a successful valuer is one who follows the complete valuation process in true spirit. Needless to say, merely following the process in full and asking the right questions from the subject company/client would through useful information guide the valuer in presenting a true and fair view of the valuation of the Asset/Company. Though a lot of guidance is available under the International Valuation Standards

(IVS) issued by the International Valuation Standards Council (IVSC) and also under the Companies (Registered Valuers and Valuation) Rules, 2017 on various aspects of the valuation process. However while applying these principles, the experience of the valuer plays a crucial role in validation of company’s business model, selection of appropriate methodologies and value conclusion.

## Intangible Assets-An exploratory study on the Nature, Approaches and Methods of Valuation

34

S K Gupta &amp; Samir Nath

Typically any organization which is run either for profit or non-profit motive has to use a combination of physical assets and intangible assets to derive its objectives. There are too many different definitions and classifications for intangible assets at micro and macro level, which causes difficulties in its recognition and measurement. To recognize an intangible asset, IAS 38 recommends three critical attributes of an intangible asset: • identifiability; • control (power to obtain benefits from the asset); • future economic benefits. There are three approaches to valuation of Intangibles: Income, market and Cost based of intangibles to generate vast economic value and growth at both the corporate and national levels as well as pose serious difficulties in managing, measuring and reporting the value of intangibles.

## Valuation Approaches and Methodologies

39

Rajkumar S. Adukia

Valuation as a field of work is gaining momentum with the changes and implementation of laws like the Companies Act, 2013, The Insolvency and Bankruptcy Code, 2016 and others. Valuation is not an exact science. It does not give an exact value, but the value derived on the basis of information available and assumptions made based on the circumstances. The approaches and methods used in the valuation may vary from person to person, but then, it does not give a reliable value, that can be used by all the stakeholders. And hence, there was a need for standardisation of approaches and methods. There are a number of valuation standards issued by various international bodies on valuation, like the European Valuation Standards or the Blue Book issued by The European Group of Valuers’ Associations, ASA Business Valuation Standards issued by American Society for Appraisers, the Red book or the Global Standards issued by Royal Institute of Chartered Surveyors, International Valuation Standards (IVS) issued by the International Valuation Standards Council (IVSC). All the standards have listed three basic approaches to valuation, i.e. Income, Market and Cost. The present article discusses in detail IVS 105 - dealing with valuation approaches and methods.

## Valuation views and controversial issues - Factors influencing security valuation

43

Hari Kumar P

The practice area of business valuation is now taking a new dimension in India. With the government enacting new regulations, professionals are forced to look at the subject with a completely new outlook. The present article attempts to provide a comprehensive view on the developments that have led to the recent amendments. While it is important to understand the regulatory framework, it is also important for professionals to understand how these changes will impact key stakeholders and evolve the business



landscape in India. Thanks to favourable demographics and economic reforms, India is witnessing increased deal activity across different capital market segments like venture capital, private equity AKA growth capital, M&A, and public equity. All these call for better reporting mechanisms and standards in security and asset valuation. The article also elaborates on the above from a stakeholder's perspective.

## Approaches to Business Valuation

47

Meenu Gupta

The continuity in growth in business and emergence of new generation entrepreneurs has tremendously increased participation of public in financial market and development of new financial products. Further, with equity valuations reaching dizzying heights across various developed and emerging markets, the importance of independent valuations all over the world has increased and it becomes immensely important for investors to understand valuation methodologies and their applicability for different sectors. Business Valuation is the process of determining economic worth of a Company based on its business model and external environment and supported with reasons and empirical evidence and hence justifying value of businesses has been complex as is based on factors including purpose, financials, management, earnings. However, there are no regulator prescribed standards for business valuation leading to lack of uniformity and generally accepted global valuation practices in valuation exercises. Herein, concept of Registered Valuer as initiated in Companies Act 2013 will serve as prescribing standard valuation rules in India, thereby ensuring better governance. The paper analyses the approaches to business valuation while briefing the role of Valuers in giving professional judgement, analyzing facts and interpreting the methods and procedures to valuation.

## Registered Valuers And Valuation Rules, 2017

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Taruna Kumbhar & Honey Soni

The Ministry of Corporate Affairs ("MCA") vide Notification Dated 18th October, 2017 notified Section 247 which came into force w.e.f. 18.10.2017. Section 247 is newly inserted section under the Companies Act, 2013 and has no corresponding or similar provision in the Companies Act, 1956. Further MCA notified on 18.10.2017 "The Companies (Registered Valuers and Valuation) Rules, 2017". Insolvency and Bankruptcy Board of India has been authorised to act as the authority under the Rules. The Rules has been further divided into 6 Chapters which deal with the Eligibility, Qualifications and Registration of Valuers, Recognition of Valuation Professional Organisations, Cancellation or suspension of certificate of registration or recognition, Valuation Standards, Penal provisions, etc. Specific Sections like Section 62(1) C, 192(2), 230(2) (c) (v), 230(3), 232(2d), 232(3) (h), 236(2) and 281(1) under the Companies Act, 2013 requires valuation report from a Registered Valuer.

## Valuation Of Financial Assets

58

Anu Amodia

Valuation is the process of determining the current worth of an asset or a company and there are many techniques used to determine the value. An analyst placing a value on a company looks at the company's management, the composition of its capital structure, the prospect of future earnings and market value of assets. A business valuation provides the business owner with multiple facts and figures regarding the actual worth or value of the company in terms of market

competition, asset values, and income values. The market value of a security is determined by what a buyer is willing to pay a seller, assuming both parties enter the transaction willingly. When a security trades on an exchange, buyers and sellers determine the market value of a stock or bond. The concept of intrinsic value, however, refers to the perceived value of a security based on future earnings or some other company attribute unrelated to the market price of a security.

Part II  
Articles on Secretarial Standards

## Secretarial Standard on Dividend

64

N. Hariharan

Dividend in normal parlance refers to returns paid out by companies to shareholders out of its profits for the current year or profits of previous years and after providing for depreciation and set off of carried losses/depreciation. In western countries, dividends are paid out once in every quarter unlike India, where the same are declared once a year at Annual General Meetings in most cases and by the Board in the case of interim/Special Dividends in some cases. The Article also highlights the different provisions relating to dividend in some foreign countries. The Companies Act, 2013 and the Rules made thereunder contain extant provisions pertaining to Declaration and payment of dividend. SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, requires top 500 listed companies by market capitalisation to formulate a dividend distribution policy providing details of factors that will be considered by a Company while determining the amount to be used for payment of dividend. The Article also dwells upon certain situations with relevant case laws pertaining to declaration of final dividend before and after AGM and situations and manner in which dividend can be waived. Secretarial Standard on Dividend provides an adequate guidance to corporates and professionals for ensuring compliance of the provisions of the Companies Act, 2013 and the Rules made thereunder.

## Secretarial Standards – A new paradigm for Progressive Board Governance and mitigation of board level risks

67

B Shanmugasundaram

Secretarial Standards are a result of the aspiration to permeate through the complexity of governance norms with an objective to create fundamental building blocks of governance. As governance norms have complexities, SS provides the much-needed clarity and figures out the priorities to develop governance acumen. By setting the tone for governance culture in organizations, Secretarial Standards delivers a reliable execution mechanism for governance prescriptions and thus brings dynamism in Board governance. The objective of Secretarial Standards is to strengthen the governance edifice among corporates in order to meet the growing expectations of the stakeholders through excelling governance practices. For the stakeholders to believe that corporates conform to good governance norms, it requires demonstration not mere assertion. Secretarial Standards actualizes an avenue to demonstrate the governance adhered by corporates. Secretarial Standards are a natural evolution in the realm of corporate governance architecture and non-financial reporting, in as much as SS deals with the board processes in addition to mandating governance disclosures.

## Research Corner

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## Stock Indices Valuation: An AI-ANN Approach

74

Dr. Prasant Sarangi

Valuation of financial data is considered as the first step towards intelligent investing. An investor while taking an investment decision anticipates the true fundamental value of his/her decision. Without the assurance for a fundamental value, any investor set adrift in a desert of uncertainty where price volatility acts as a cause of concern. The study presents an empirical case which is intended to develop a best fit technique suitable for an investor while taking an investment decision. Twenty various AI-ANN models with four architectures are constructed to predict the crude oil series. Errors when calculated by using two valuation error measures, observed that 3-5-1 ( $\alpha=0.7$  and  $\varepsilon=0.7$ ) model has the minimum error and hence, best suits to predict the estimated series. MSE is found to be the best suitable valuation error measure for the crude oil series.

## THE ICSI-CCGRT Invites Manuscripts on Multidisciplinary Case Studies

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## Legal World

P-81

- **LMJ: 06:06:2018** A Company becomes a legal entity in the eye of the law only when it is incorporated. Prior to its incorporation, it simply does not exist.[SC]
- **LW 40:06:2018** CCI dismisses complaint against oil manufacturing companies.
- **LW 41:06:2018** Commission is of the view that there is no reason to disagree with the findings of the DG as the material on record does not suggest any cartelisation amongst banks and/or IBA to determine SBIRs or service charges. [CCI]
- **LW 42:06:2018** In fact, we are of the view that there is no discernible difference in the statutory concept of 'transaction value' and the judicially evolved meaning of 'normal price'. [SC]
- **LW 43:06:2018** Expenses incurred in foreign exchange for providing the technical services outside shall be allowed to exclude from the total turnover. [SC]
- **LW 44:06:2018** Merely because the pay scale may have been and remained the same, it cannot lead to the conclusion of a conscious parity on the principle of equal pay for equal work so as to make it discriminatory and a ground for grant of parity to Assistant Security Officer, Security Havildar and Security Guard also.[SC]
- **LW 45:06:2018** In other words, if on the undisputed facts, this Court has granted benefit to the canteen workers in the case of Indian Petrochemicals (supra) then there is no reason that on the same set of undisputed facts arising in this case, the Court should not grant the benefit to the employees/workers in this case.[SC]
- **LW 46:06:2018** It is not one of the arbitration clauses which can be interpreted in a way that denial of a claim would itself

amount to dispute and, therefore, it has to be referred to arbitration. [SC]

- **LW 47:06:2018** It is mandatory on the part of the Collector to comply with the procedure prescribed under Section 15(2) of the Act so as to make the acquisition proceedings legal and in conformity with the provisions of the Act. [SC]

## From the Government

P-91

- Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2018
- Companies (Audit and Auditors) Amendment Rules, 2018
- Clarification-Condonation of Delay Scheme, 2018 - reg.
- Date of coming into force of certain sections of the Companies (Amendment) Act, 2017
- Companies (Meetings of Board and its Powers) Amendment Rules, 2018
- Companies (Registration of Office and Fees) Second Amendment Rules, 2018
- Companies (Prospectus and Allotment of Securities) Amendment Rules, 2018
- Companies (Share Capital and Debentures) Second Amendment Rules, 2018
- Companies (Specification of Definition Details) Amendment Rules 2018
- Notification No. G.S.R. 432 (E) - Corrigendum
- Clarification with regard to provisions under section 135 (5) of the Companies Act, 2013
- Circular for implementation of certain recommendations of the Committee on Corporate Governance under the Chairmanship of Shri Uday Kotak
- Amendment to SEBI Circular No. IMD/FPIC/CIR/P/2018/61 dated April 5, 2018 and Circular No. IMD/FPIC/CIR/P/2018/74 dated April 27, 2018 on Monitoring of Foreign Investment limits in listed Indian companies
- Investment of own funds (excluding funds lying in Core Settlement Guarantee Fund) by Clearing Corporations in International Financial Services Centre (IFSC)
- Segregated Nominee Account Structure in International Financial Service Centre (IFSC)
- System-driven Disclosures in Securities Market
- Enhanced Disclosure and Transparency Norms for Credit Rating Agencies

## Other Highlights

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- MEMBERS RESTORED DURING THE MONTH OF APRIL 2018
- CERTIFICATE OF PRACTICE SURRENDERED DURING THE MONTH OF APRIL 2018
- PAYMENT OF ANNUAL MEMBERSHIP AND CERTIFICATE OF PRACTICE FEE FOR THE YEAR 2018-2019
- COUNCIL / REGIONAL COUNCILS ELECTIONS – 2018
- CSBF CORNER
- BOOK REVIEW
- CG CORNER
- ETHICS & SUSTAINABILITY CORNER
- GST CORNER



# 1

## ARTICLES



- BUSINESS VALUATION IN INDIA – BEYOND THE NUMBERS
- 27 FABLES OF ESOP - VALUATION OF STOCK OPTION CASE STUDIES
- VALUATION PROCESS FOR ASSET CLASS: SECURITIES OR FINANCIAL ASSETS
- INTANGIBLE ASSETS : AN EXPLORATORY STUDY ON THE NATURE, APPROACHES AND METHODS OF VALUATION
- VALUATION APPROACHES AND METHODOLOGIES
- VALUATION VIEWS AND CONTROVERSIAL ISSUES - FACTORS INFLUENCING SECURITY VALUATION
- APPROACHES TO BUSINESS VALUATION
- REGISTERED VALUERS AND VALUATION RULES, 2017
- VALUATION OF FINANCIAL ASSETS
- SECRETARIAL STANDARD ON DIVIDEND
- SECRETARIAL STANDARDS – A NEW PARADIGM FOR PROGRESSIVE BOARD GOVERNANCE AND MITIGATION OF BOARD LEVEL RISKS

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5. The article should ordinarily have 2500 to 4000 words. A longer article may be considered if the subject so warrants.
6. The article must carry the name(s) of the author(s) on the title page only and nowhere else.
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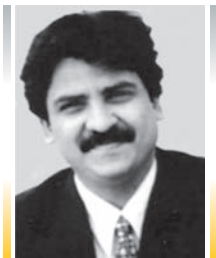
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# Business Valuation in India – Beyond the Numbers

*Keeping in view the growing relevance and importance of valuation in business and investment decisions as well as for regulatory compliance, the development of practice of valuation as a discipline and profession (Registered Valuers) has become a necessity. The complex financial markets, emerging global economy and changing framework of accounting and financial reporting (Ind AS) in India has only re-enforced its need.*



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**Price is what you pay, Value is what you get – Warren Buffet**

**C**redible valuations are critical to the efficient working of the capital markets, businesses, government and all its stakeholders. With growing shareholder activism, importance of independent valuations is arising all over the world including India.

Valuation of Securities or Financial Assets is critical for strategic business decisions including fund raising, M&A, Sale of businesses, Strategic business decisions like Family or Shareholders disputes, Voluntary value assessment or may be just to comply with certain regulatory or accounting requirements in India under RBI, Income Tax, Companies Act, SEBI Laws, etc. Better Corporate Governance is also leading to requirement of independent Business Valuations.

Many legislations in India have prescribed valuation methodologies to be applied in specific situations for a particular purpose but more recently, a few legislations have prescribed valuation as per internationally accepted valuation guidelines. Though there are International valuation standards, however not much guidance is available in India on the manner in which specific valuation methodologies are to be applied and different valuer take different assumptions leading to difference in value conclusion. In many cases the valuation also lacks uniformity and generally accepted global valuation practices. Thus, in the absence of standards of business valuation in India, the valuation is more of an art based on the professional experience and exposure of the valuer rather than science based on empirical studies and logics.

Role of a valuer is to consider the facts of each case, understand purpose of valuation and applicable regulatory norms for such transaction. Validation of the inherent assumptions of a business model is critical in any business valuation engagement.

Limitations and Assumptions should be properly explained in the valuation report.

## SOME REASONS TO GET BUSINESS VALUATION

Transactions	Regulatory	Accounting	Dispute Resolution	Value Creation
Merger	RBI	ESOP	NCLT / Courts	Equity Research
IPO	Income Tax	Purchase Price Allocation	Arbitration	Credit Rating
Acquisition/ Investment/ Sale	SEBI Companies Act	Impairment/ Diminution	Mediation	Corporate Planning
Voluntary Assessment	IBC	Fair Value (Ind AS)		

## SKILLS REQUIRED FOR PERFORMING VALUATIONS

- Strong understanding of Valuation principles
- Knowledge of prescribed Valuation requirements under different Laws
- Understanding of Sectoral dynamics, Trends and Rule of Thumb for Industries
- Awareness of Market multiples (Listed Companies) and Deal/ Funding Transactions (Unlisted Companies) across Industries and Stages
- Knowledge of relevant Accounting Standards (Ind AS)
- Knowledge of Taxation aspects (Tax on Asset Sale, Profits, Tax shield on Accumulated Losses, etc.)

## REVENUE RULING 59-60 (INTERNAL REVENUE SERVICE OF USA)

Revenue Ruling (RR) 59-60 is one of the oldest guidance available on Valuation in the world.

And still most relevant for Tax Valuations specifically for valuing closely held equity shares. It is the most widely referenced revenue ruling, also often referenced for Non Tax Valuations.

## While valuing, it gives primary guidance on the following eight basic factors to consider-

- Nature of the Business and the History of the Enterprise from its inception
- Economic outlook in general and outlook of the specific industry in particular
- Book Value of the stock and the Financial condition of the business
- Earning Capacity of the company
- Dividend-Paying Capacity of the company
- Goodwill or other Intangible value

\* Past President, The Institute of Company Secretaries of India.

**Role of a valuer is to consider the facts of each case, understand purpose of valuation and applicable regulatory norms for such transaction. Validation of the inherent assumptions of a business model is critical in any business valuation engagement. Limitations and Assumptions should be properly explained in the valuation report.**

- Sales of the stock and the Size of the block of stock to be valued
- Market prices of stock of company engaged in the same or a similar line of business

### EMERGING VALUATION OPPORTUNITIES IN INDIA

For so long, valuation has been debated in India as an art or science, and substantial part of the litigation in M&A takes place on the issue of valuation as it involves an element of subjectivity that often gets challenged. More so, as in India, there are not much regulator-prescribed standards for business valuation specifically for unlisted and private companies; so in many cases, the valuation lacks uniformity and generally accepted global valuation practices. Even limited judicial guidance is available over the subject in India. Further, absence of any stringent course of action and non-regulation under any statute is also leading to loose ends.

In India, valuation in itself is evolving. New concepts of 'Registered Valuer' in the Companies Act, 2013 and 'Fair Value' in Ind AS are setting the tone for Indian valuation standards. With the valuation process opening up in India and more debate happening on valuations, complex valuation methods are also getting recognition since valuation is emerging as a discipline in India.

Section 247 of the Companies Act, 2013 (Act) had brought the concept of registered valuers to regulate the practice of valuation in India and to standardise the practice of valuation in line with international standards leading to transparency and better governance. The same has come into force w.e.f. 18<sup>th</sup> October, 2017 with the issuance of Companies (Registered Valuers and Valuation) Rules, 2017.

Section 247 of the Act states that the Registered Valuer shall be appointed by the audit committee or in its absence by the Board of Directors of that company.

Regarding the functioning and duties of the Registered Valuer, it is stated that the registered valuer shall:

- make an impartial, true and fair valuation of any assets that may be required to be valued
- exercise due diligence while performing the functions as valuer
- make the valuation in accordance with such rules as may be prescribed; and
- not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time during 3 years prior to his appointment as valuer or 3 years after valuation of assets was conducted by him.

The registered valuer under the Companies Act, 2013 shall specifically do valuation of one or more asset classes namely Land and Building, Plant and Machinery and Securities and Financials Assets. It is also clarified under the rules that the registered valuer provisions shall not automatically become applicable to valuation required under any other law (like RBI, Income Tax, SEBI, etc.), though the other regulators may adapt these registered valuer provisions by modification of their

respective statutes.

As of now, the registered valuer provisions cover the following Acts/Regulations - Companies Act, 2013, Insolvency Code, 2016 and SEBI (REIT and InvIT) Regulations, 2016. However, in times to come, it is expected that other regulators would also align their Act/Rules with these Registered Valuer provisions.

### The Companies (Registered Valuers and Valuation) Rules, 2017 contain various aspects pertaining to registered valuers including:

- Who can become valuer (including Eligibility, Educational Course and Examination requirements and also Fit and Proper Person) for each asset class and the process involved  
It is clarified in the rules that for determining whether an individual is a fit and proper person, the authority may take into consideration any criteria including integrity, reputation and character, absence of convictions and restraint orders and competence and financial solvency.
- Role of registered valuers organisation (RVO) for conducting educational courses, granting membership, conducting training, laying code of conduct, monitoring the functioning of valuers and addressing grievances including conducting disciplinary proceedings against valuers who are its members
- The valuation standards required to be adhered to while performing and reporting
- Contents of the valuation report including permissible caveats and limitations
- Professional competence and due care and independence of valuer
- Maintenance of record of each assignment for minimum 3 years; and
- Regulation of the profession including model code of conduct for registered valuers and RVOs.

The Insolvency and Bankruptcy Board of India (IBBI) is the Regulating Authority for the Valuation Profession. The IBBI has already published the syllabus and other details of educational courses and valuation examinations for Valuation of different class of assets. These educational courses are being delivered by the RVO in not less than 50 hours for each class of assets and thereafter the IBBI shall conduct valuation examinations of the eligible members to test the knowledge, practical skills and ethics of individuals in respect of valuation before they are awarded certificate of Registered Valuers.

Besides others, the IBBI has recognised all three RVOs of Professional bodies: ICSI, ICAI, ICMAI RVO for Asset Class: Securities or Financial Assets.

### Instances where valuation by Registered Valuer is mandated under the Companies Act, 2013

Sl. No.	Section	Particulars
1	62(1)C	Valuation report for further issue of shares



2	192(2)	Valuation of assets involved in arrangement of non-cash transactions involving directors
3	230(2)(c)(v)	Valuation of shares, property and assets of the company under a scheme of corporate debt restructuring
4	230(3)	Valuation report along with notice of creditors/shareholders meeting –under scheme of compromise/arrangement
5	232(2)(d)	The report of the expert with regard to valuation, if any, would be circulated for meeting of creditors/members
6	232(3)(h)	The valuation report to be made by the tribunal for exit opportunity to the shareholders of transferor company – under the scheme of compromise/arrangement in case the transferor company is listed company and the transferee company is an unlisted company
7	236(2)	Valuation of equity shares held by the minority shareholders
8	281(1)	Valuing assets for submission of report by liquidator

**Instances where valuation by a Registered Valuer is mandated under the Insolvency and Bankruptcy Code, 2016** Regulation 27 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 deals with appointment of registered valuers. It states that the resolution professional shall within 7 days of his appointment, appoint two registered valuers to determine the fair value and the liquidation value of the corporate debtor in accordance with Regulation 35.

Under the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, 'Registered Valuer' means a person registered as such in accordance with the Companies Act, 2013 and rules made thereunder.

**The model code of conduct for Registered Valuers issued by MCA under Companies (Registered Valuers and Valuation Rules), 2017 also gives emphasis on the Ethics and Governance aspects and covers-**

**• Integrity & Fairness**

- A valuer shall, in the conduct of his/its business, follow high standards of integrity and fairness in all his/its dealings with his/its clients and other valuers
- A valuer shall maintain integrity by being honest, straightforward, and forthright in all professional relationships



**The registered valuer under the Companies Act, 2013 shall specifically do valuation of one or more asset classes namely Land and Building, Plant and Machinery and Securities and Financials Assets. It is also clarified under the rules that the registered valuer provisions shall not automatically become applicable to valuation required under any other law (like RBI, Income Tax, SEBI, etc.), though the other regulators may adapt these registered valuer provisions by modification of their respective statutes.**

- A valuer shall endeavour to ensure that he/it provides true and adequate information and shall not misrepresent any facts or situations
  - A valuer shall refrain from being involved in any action that would bring disrepute to the profession
  - A valuer shall keep public interest foremost while delivering his services.
- Professional Competence and Due Care**
- A valuer shall render at all times high standards of service, exercise due diligence, ensure proper care and exercise independent professional judgment
  - A valuer shall carry out professional services in accordance with the relevant technical and professional standards that may be specified from time to time
  - A valuer shall continuously maintain professional knowledge and skill to provide competent professional service based on up-to-date developments in practice, prevailing regulations/guidelines and techniques
  - In the preparation of a valuation report, the valuer shall not disclaim liability for his/its expertise or deny his/its duty of care, except to the extent that the assumptions are based on statements of fact provided by the company or its auditors or consultants or information available in public domain and not generated by the valuer
  - A valuer shall not carry out any instruction of the client insofar as they are incompatible with the requirements of integrity, objectivity and independence
  - A valuer shall clearly state to his client the services that he would be competent to provide and the services for which he would be relying on other valuers or professionals or for which the client can have a separate arrangement with other valuers.
- Independence and Disclosure of Interest and Confidentiality**
- A valuer shall act with objectivity in his/its professional dealings by ensuring that his/its decisions are made without the presence of any bias, conflict of interest, coercion, or undue influence of any party, whether directly connected to the valuation assignment or not
  - A valuer shall not take up an assignment if he/it or any of his/its relatives or associates is not independent in terms of association to the company
  - A valuer shall maintain complete independence in his/its professional relationships and shall conduct the valuation independent of external influences
  - A valuer shall wherever necessary disclose to the clients, possible sources of conflicts of duties and interests, while providing unbiased services
  - A valuer shall not deal in securities of any subject company after any time when he/it first becomes aware of the possibility of his/its association with the valuation, and in accordance with the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 or till the time the valuation report becomes public, whichever is earlier
  - A valuer shall not indulge in "mandate snatching" or offering "convenience valuations" in order to cater to a company or client's needs
  - As an independent valuer, the valuer shall not charge success fee

**Regulation 27 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 deals with appointment of registered valuers. It states that the resolution professional shall within 7 days of his appointment, appoint two registered valuers to determine the fair value and the liquidation value of the corporate debtor in accordance with Regulation 35.**

- In any fairness opinion or independent expert opinion submitted by a valuer, if there has been a prior engagement in an unconnected transaction, the valuer shall declare the association with the company during the last five years.
- **Confidentiality**
  - A valuer shall not use or divulge to other clients or any other party any confidential information about the subject company, which has come to his/its knowledge without proper and specific authority or unless there is a legal or professional right or duty to disclose.
- **Information Management**
  - A valuer shall ensure that he/ it maintains written contemporaneous records for any decision taken, the reasons for taking the decision, and the information and evidence in support of such decision. This shall be maintained so as to sufficiently enable a reasonable person to take a view on the appropriateness of his/its decisions and actions
  - A valuer shall appear, co-operate and be available for inspections and investigations carried out by the authority, any person authorised by the authority, the registered valuers organisation with which he/it is registered or any other statutory regulatory body
  - A valuer shall provide all information and records as may be required by the authority, the Tribunal, Appellate Tribunal, the registered valuers organisation with which he/it is registered, or any other statutory regulatory body
  - A valuer while respecting the confidentiality of information acquired during the course of performing professional services, shall maintain proper working papers for a period of three years or such longer period as required in its contract for a specific valuation, for production before a regulatory authority or for a peer review. In the event of a pending case before the Tribunal or Appellate Tribunal, the record shall be maintained till the disposal of the case.
- **Gifts and hospitality**
  - A valuer or his/its relative shall not accept gifts or hospitality which undermines or affects his independence as a valuer. Explanation. For the purposes of this code the term 'relative' shall have the same meaning as defined in clause (77) of Section 2 of the Companies Act, 2013
  - A valuer shall not offer gifts or hospitality or a financial

or any other advantage to a public servant or any other person with a view to obtain or retain work for himself/ itself, or to obtain or retain an advantage in the conduct of profession for himself/ itself.

- **Remuneration and Costs**
  - A valuer shall provide services for remuneration which is charged in a transparent manner, is a reasonable reflection of the work necessarily and properly undertaken, and is not inconsistent with the applicable rules
  - A valuer shall not accept any fees or charges other than those which are disclosed in a written contract with the person to whom he would be rendering service.
- **Occupation, employability and restrictions**
  - A valuer shall refrain from accepting too many assignments, if he/it is unlikely to be able to devote adequate time to each of his/ its assignments
  - A valuer shall not conduct business which in the opinion of the authority or the registered valuer organisation discredits the profession.

## CONCLUDING THOUGHTS

Keeping in view the growing relevance and importance of valuation in business and investment decisions as well as for regulatory compliance, the development of practice of valuation as a discipline and profession has become a necessity. The complex financial markets, emerging global economy and changing framework of accounting and financial reporting (Ind AS) in India has only re-enforced its need.

A proper process should be followed by the valuer while valuation of securities and financial assets and judgement exercised based on his professional experience. Though internationally business valuations are governed by broadly various standards such as International Valuation Standards (IVS) issued by the International Valuation Standards Council (IVSC), the Registered Valuer Rules governing the practice of valuation in India have now come into force. The IBBI is implementing these rules and RVOs have begun their educational courses. The registration of valuers needs to be done by 30<sup>th</sup> September 2018.

With the valuation process opening up in India and more debate happening on valuations, complex valuation methods are also getting recognition as valuation is emerging as a discipline in India. It is high time now that professionals interested in practicing in this field should come forward and gain academic and practical knowledge of business valuation principles and concepts, valuation approaches and methodologies and also the international valuation standards. However, it must be remembered that valuation is a very onerous task and comes with lot of responsibilities as it now stands regulated by the government and the valuer's experience would still remain the key to valuations.

Good quality valuation reports follow generally accepted valuation principles, global best practices and the applicable regulatory framework. Such reports also build Public Trust. Common Education is thus important and professionals including the aspiring valuers should now look at their capacity building as Business Valuation is beyond the numbers. CS

# 27 FABLES of ESOP - Valuation of Stock Option Case Studies

*The significance of how valuable the stock options are cannot be undermined. A large number of companies use stock options, however very few professionals work in this area. It is highly recommended that young Company Secretaries get into this area and make their mark. With registered valuer concept becoming reality the study of ESOP valuation carries vital importance.*



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Last week of May 2018 started with two significant news. One, an announcement by Tata motors, the first flagship TATA entity to offer ESOPs and another on the TV channels Walmart acquiring flipkart and Sachin Bansal co-promoter and founder getting billions under ESOP. The significance of how valuable the stock options are cannot be undermined.

## CASE 1

Tata Motors has offered \$45 billion of equity to employees through stock options amounting to a little less than half a percent of its total equity. In this endeavor it has left behind other formidable TATA companies like Tata steel and TCS (yes, even IT sector).

The value additions arising out of ESOPs are

- ring fencing critical talent during turnaround phase, to quote P B Balaji CFO Tata Motors
- compensating management while making losses
- to compensate top management adequately without breaching the restriction under Companies Act of 5% of a company's profits on remuneration to whole time directors.

A large number of companies have used stock options, however very few professionals work in this area. It is highly recommended that our young CSs get into this area and make their mark. With registered valuer concept becoming reality the study of ESOP valuation carries vital importance.

## CASE 2

Indian laws (Companies Act, 2013) prohibit grant of stock options to non-employees. But globally stock options to non-employees are quite popular. The most famous case that comes to mind is of Indian Sabir Bhatia of Hotmail fame who issued stock options to his suppliers and service providers too. ESOPs have been used practically as currency by technology companies during the dotcom boom.

## CASE 3

Sachin Bansal of Flipkart (promoter – co-founder) earned

billions of dollars through his stake sale to Walmart. Though Companies Act prohibits stock options to promoters, the Singapore based foreign company could issue stock options to Indian subsidiary company's promoters.

An ESOP professional will come across complex factors of such nature to be considered in valuation of stock options.

The International Financial Reporting Standards under IFRS 2 and Ind AS 102 India's convergent accounting standards with IFRS, prescribe the accounting treatment and measurement (valuation) of ESOPs. To put it in simple terms, IFRS 2 (and Ind AS 102) has separate methodologies for measurement of stock options granted to non-employees and employees. Those granted to non-employees are to be recorded at fair value of goods and services provided. However, if the fair value cannot be measured reliably then the same should be measured at fair value of the ESOP instrument (that is, option granted).

Fair value measurement of goods and services provided could be comparatively easy (or rather less difficult). However, one may come across complex situations, for example, a non-employee, say a consultant, may be creating a new product or process resulting in creation of patent resulting in providing a capital intangible asset. Measuring such asset reliably would be surely too technical due to the uncertainty of benefits attached to it. A R&D company did it for one pharma company (name cannot be disclosed) with stock option granted as consideration.

## CASE 4

A telecom company bought 5 crores of handsets at a negligible per unit price. To compensate the supplier, it provided stock options of a giant group's subsidiary which was unlisted. Another instance of using equity as currency!

## CASE 5, 6

Another situation which needs consideration is change in existing shareholders stake. If it is increased due to rights and bonus shares then should the stock option holders and convertible option holders' stakes increase proportionately, i.e., should "value for value" principle be adopted? Almost all the companies have followed the intrinsic value method while making adjustments to outstanding options. Given the lack of clarity in the regulations, no one seems to have objected to such adjustments. Some of the recent cases where companies have used intrinsic value to make adjustments are:

Demerger between Polaris Financial Technology Limited



**IFRS 2 (and Ind AS 102) has separate methodologies for measurement of stock options granted to non-employees and employees. Those granted to non-employees are to be recorded at fair value of goods and services provided. However, if the fair value cannot be measured reliably then the same should be measured at fair value of the ESOP instrument (that is, option granted).**

(Demerged Company) and Intellect Design Arena Limited (Resulting Company).

Merger of Mahindra Satyam with Tech Mahindra (source -<http://www.esopdirect.com/newsletter/Corporate%20action%20adjustment.pdf>)

### CASE 7

Talking about Mahindra Group, Restricted Stock Units (RSU) comes to mind.

An *option* is a right to purchase stock of a company sometime in the future for a stated price, subject to a number of restrictions and limitations. Until you buy the stock, you own nothing, and if you don't buy the stock, you never own anything.

A *restricted stock unit* is a contractual promise by the company to either issue you stock a long time in the future after various events have taken place, or else pay you the cash equivalent. Similar to options, you don't own anything and you have no rights until and unless you own the stock, but it's a step further removed. It's basically phantom stock, a right to payment that is indexed on the future price of the company's stock.

(Source - Sir Gilberman, I've founded more startups than I can remember, and advised hundreds.)

In valuations of RSUs, the stocks are issued free and hence will have higher tax impacts.

### CASE 8

Amazon India which has offered RSU to its employees looks higher in first 2 years because of the way in which their compensation is designed:

Year 1: Base pay + sign-on

Year 2: Base pay + sign-on

Year 3: Base Pay + RSU

Year 4: Base Pay + RSU

It can be observed that sign-on is 25-30% of base pay. No hike on that annually. RSUs vest at 5%, 15%, 40%, 40% in years 1, 2, 3, 4. Most leave in 2 years – so one won't get 80% of one's RSUs.

(Source <https://www.quora.com/What-is-Amazons-stock-compensation-practice>)

### CASE 9

This is nothing but rolling stock options which were introduced by famous INFOSYS in India in 1990. It introduced graded stock options and had made an exception for its CEO Vishal Sikka when he joined the company in August 2014. At that time Infosys had granted the former SAP product chief 22,794 restricted stock units as part of his annual pay package that included stock options worth \$2 million a year.



[//economictimes.indiatimes.com/articleshow/50988373.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://economictimes.indiatimes.com/articleshow/50988373.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

### CASE 10

A bank in Saudi Arabia introduced graded stock options for employees with 1/3<sup>rd</sup> and 2/3<sup>rd</sup> to be exercised within completion of 18 and 30 months. The typicality of these options was they were granted by parent in USA and hence the valuation and accounting treatment as per US GAAP & IFRS differed in values. So, another aspect to be considered is whether use of different accounting standards would affect valuations.

The Securities and Exchange Board of India has clarified rules on employee stock option plans (ESOPs) after the new insider trading rules restricted the timing of sale of such shares. "Where a designated person sells shares (say on August 01, 2015), acquires shares later under an ESOP (say on September 01, 2015) the acquisition under ESOP shall not be a contra trade. Further, he can sell/pledge shares so acquired at any time thereafter without attracting contra trade restrictions. He, however, will not be able to purchase further shares during the period of six months from August 01, 2015 when he had sold shares."

Source -[//economictimes.indiatimes.com/articleshow/48671125.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://economictimes.indiatimes.com/articleshow/48671125.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

This is an effective mechanism to control insider trading and such controls should be incorporated at global level also.

### CASE 11

Overseas ventures like Jacobs Engineering offer stock options



which provides a classic example of non-vesting conditions -le of non-vesting conditions -

The following employees shall not be Eligible Employees under the Plan:

- i. Employees who normally work fewer than 20 hours per week;
- ii. Employees who normally work five or fewer months during the fiscal year of the Company;
- iii. Employees who have completed less than one year of employment by the Company or a participating subsidiary of the Company; and
- iv. Employees who are not actively employed by the Company at the beginning of a six-month Election Period, including employees who are on disability leave or leave of absence.

Source- <https://www.sec.gov/Archives/edgar/data/52988/000119312509011928/dex101.htm>

A valuer should first consider the following dimensions in order to arrive at fair valuation:

- a) Employees or non-employees
- b) Cash settled (SAR) or equity settled

**Companies Act, 2013 prohibits grant of stock options to non-employees. But globally stock options to non-employees are quite popular. The most famous case that comes to mind is of Indian Sabir Bhatia of Hotmail fame who issued stock options to his suppliers and service providers too. ESOPs have been used practically as currency by technology companies during the dotcom boom.**

### c) ESPPS/ESPP or ESOP

#### CASE 12, 13

Let us now understand the terms like SAR. Mindtree and Saregama have issued ESOPs to be settled in cash, based on appreciation in share price and SEBI has clarified that it does not require its approval.

#### CASE 14, 15, 16, 17, 18

While Bank of America was the first one to introduce SARs in 2006. DLF, Birla SunLife, Bajaj Allianz, Cairns India followed largely the same which are famously titled as phantom stock options. In this, the treatment is similar to a shareholder in respect of dividends, bonus, rights etc. accumulating which gave a lot of retention value in the eyes of HR and employees both.

#### CASE 19

An example of a pharma company in Japan (name not disclosed) is worth studying. It offered listed MF options and listed debentures options of the group owned financial sector companies.

#### CASE 20

This may not be so relevant in India as the trading in debt market is not very easy. However, in the Indian context, new trends wherein stock options carry privilege of cash settlement if listing does not happen by a specific date are worth considering. Such options were granted by Foundation software, a famous ERP implementors of Y2k period. Valuation in such cases is carried out based on comparison of grant date fair values of both options and rights. If the options' fair value is higher then the difference is recorded as equity over a period while liability valuation including reassessment is recorded for liability portion.

#### CASE 21, 22

While on the subject of unlisted companies' huge numbers of start-ups come to our mind. These are booming in India. In the case of start-ups, stock option issue to promoters and few other liberal provisions have been made, compared to strict ruling of listed companies which can issue only up to 1% per employee maximum of the issued capital. The pharma aggregators like Netmeds, 1mg, the glassdoor.com anonymous feedback tells a lot about unlisted start-up wherein investors are expected to queue-in. Essentially the valuation of aggregators' shares depends on market and growth. So also, the ESOPs valuation with which the GMV gross mercantile value becomes a popular model to be used as a base.


#### CASE 23, 24

Similarly, giant famous taxi-hire aggregators like OLA and Uber offer huge stock options and the settlements go in few crores for key employees even in first few years. Then comes a growth phase like OLA acquired TFS with some major investments and cross-mergers, making GMV model vulnerable and multi-dimensional.

Ref. source vccircle.com.

#### CASE 25

The demerger of Blue star and blue star infotech was done with main objective of segregating a legal entity wherein

 a valuer has to be agile enough to consider various factors in valuation even before applying mathematical models like Black and Scholes OR Binomial model. A mere financial modelling for the same does not mean an acumen for ESOP valuations.

stock options can be offered to growing IT sector employees distinguishing the IT company from white goods sector with lower growth and blue collared employees. It kept 3 parameters for eligibility like performance, years of service and grade.

### CASE 26

Similar mergers in pharma biggie Pfizer acquiring Park-Davis settled employee stock options of departmental heads for a few crores as early as in 1997 (imagine PPP that time and value of a crore those days.)

### CASE 27

One scheme of a famous insurance company even kept a restriction on sale of shares by an employee for a few years even after vesting. Such factors bring down the fair value in valuation.

To summarise, a valuer has to be agile enough to consider various factors in valuation even before applying mathematical models like Black and Scholes OR Binomial model. A mere financial modelling for the same does not mean an acumen for ESOP valuations.

The various factors leading to assumptions to be considered for mathematical models as provided in International valuation standards and International financial reporting standards as well as Ind AS, India's convergent version of IFRS are-

- Current share price
- Expected volatility
- Expected dividends
- Market based performance conditions like transferability
- Term of vesting period
- Behavioural aspects

Other factors to be considered are –

- Merger, demerger and venture capital possibilities
- Start-up specialties
- Competition
- Industry growth rate
- Non-vesting conditions
- Performance, grade, seniority like conditions
- Normal compensation package (other than ESOPs and the ratio of the two)
- Ring fencing talent during loss years – so turnaround when and which year relative to vesting period
- Graded vesting requires calculation of value of each vesting period to be worked out as if each one is an independent scheme.

ESOP valuation is normally required for accounting. However, the age-old concept of human asset accounting will require a review of human assets valuation under Lev and Schwartz model to look at employee stock options even from angle of pure valuation principles (leaving aside accounting definition) and then behavioural aspects of human being also come

into picture with relative ease of retention for better brand companies than near equivalent competitors. The most widely used model of ESOP valuation is Black-Scholes model. It has critical assumptions like-

- 1) The short-rate interest rate and volatility are known and constant through time.
- 2) No transaction costs or services associated with buying or selling the option.
- 3) The options are European-style options which can only be exercised on the expiration date.
- 4) The returns on the underlying stock prices are normally distributed.
- 5) The Black-Scholes model assumes that markets are perfectly liquid and it is possible to purchase or sell any amount of stock or options or their fractions at any given time.

(source [http://ideaexchange.uakron.edu/cgi/viewcontent.cgi?article=1410&context=honors\\_research\\_projects](http://ideaexchange.uakron.edu/cgi/viewcontent.cgi?article=1410&context=honors_research_projects))

Black-Scholes Model

$$C = SN(d1) - KE(-rt)N(d2)$$

C = Theoretical call premium

S = Current Stock Price

t = time until option expiration

K = option strike price r = risk free interest rate


N = Cumulative standard normal distribution

There are three key differences between ESOs and short-term traded options that must be accounted for with the inputs.

- 1) ESOs cannot be traded which makes them worth less than a traded option that can be sold/exercised at will.
- 2) ESOs can be forfeited if employee is terminated whereas the Black-Scholes model assumes the option cannot be forfeited prior to expiration.
- 3) ESOs typically have much longer terms (ten years) than traded options.

Author's comments - The 3<sup>rd</sup> i.e. last point is not valid in most of the companies as we see in India currently that young generation employees are not emotionally attached to companies and many of the companies also do not believe in providing job security. So, 10 years is farfetched in fact it has moved downwards from 3 years lock-in to graded options within 3 years. (source - <http://www.morganstanleyfa.com/public/facilityfiles/mssb269144/f5324d6f-ad5d-4891-9358-bc8da5b77d4f.pdf>)

Lattice Model - Binomial Options Pricing Model. The Binomial Model is an open-form or lattice model that creates a tree of possible future stock-price movements to achieve the option's price. In contrast, the Black-Scholes model is a closed-form model that solves for an option's price from an equation. A big advantage of the binomial is that it can value an American-style option, which can be exercised before the end of its term, and it is the style of option ESOs usually take.

Having made clear, the complexity of ESO valuations, the author wishes great success for the CS Professionals who will be registered valuers soon by taking training and passing examinations, will make a mark for themselves not only in India but become global valuers by understanding valuation nuances. 



# Valuation Process for Asset Class: Securities or Financial Assets

*The valuation of securities or financial assets is done best when the complete process is followed beginning with understanding the purpose of valuation, making information requisition to company considering the purpose of valuation, doing financial analysis and normalisation adjustments, understanding industry characteristics and trends, forecasting and validating company performance, considering and applying appropriate valuation approach and performing scenario analysis, value adjustments, documentation and reporting.*



## Chander Sawhney

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**V**aluation is the process of determining the “Economic Worth” of an Asset or Liability under certain “Assumptions and Limiting Conditions” and subject to the “Data” available on the “Valuation Date”.

Valuation has some important characteristics which are explained below-

### ECONOMIC WORTH

In valuation, the objective is to determine the economic worth of an asset or liability. Non-economic considerations do not play a role in value assessment. For example a person may have a liking for some particular Asset due to emotional reasons but these aspects cannot be factored in the Valuation. This could be one reason for difference in the valuation derived and price offered for an asset reconfirming that Price is not same as Value.

### ASSUMPTIONS AND LIMITING CONDITIONS

Valuation of a company is based on its business plan which in turn is dependent on a lot of assumptions relating to the expected growth of its business. The Management of a company prepares the financial forecast of its business based on which the valuer undertakes the valuation considering the prevailing economic and industry trends.

It is clarified that it is the role of the valuer to validate the assumptions made by the management in its business plan including the basis of actual and estimated Revenues, Profits, Capital expenditure and Working Capital. The valuer also has to make certain assumptions regarding the choice of valuation methodology, cost of capital, value adjustments like discounts and premium, etc. Weights to be given to each of valuation methodologies while concluding value also require valuer's assumptions considering the facts of the case.

### PURPOSE

If the purpose is ‘regulatory compliance/financial reporting’, the valuer has to strictly follow the prescribed valuation methodologies as prescribed under applicable laws, but if the

purpose is ‘business valuation’, all valuation methodologies need to be applied and value to be concluded based on the facts of the case. Judgement and experience of the valuer would play a bigger role in this type of valuation engagement.

Similarly, if the purpose is to determine value for minority shareholders or say for ESOP, valuation methods should be chosen to arrive at suitable value conclusion. Likewise for determining the value for M&A or fund raising, valuation methods chosen should depict control characteristics.

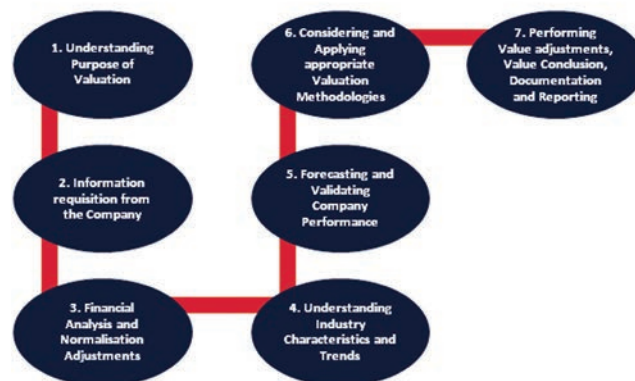
### DATA

There can be limitations regarding the availability of required data including comparable companies/transactions (and their updated financials). If the limiting conditions are so material in nature that the impact on the overall engagement is very significant in the professional judgment of the valuer, the valuer may consider not to issue any report or may withdraw from the engagement.

### VALUATION DATE

All valuations are done at a particular point of time. The valuation date is the specific date at which the valuer estimates the value of the subject interest and concludes on his estimation of value. Date is critical for any valuation engagement as relative valuation (by benchmarking of comparable peer companies or transactions) is heavily dependent on the external market conditions of the industry, economy, etc., on that date. We have seen all start-up valuations to be euphoria driven which materially changed their valuations in last 3 years. Similarly, DCF valuation considers the projections from the valuation date itself.

The valuation process involves the following steps:





In case valuation is for regulatory or financial reporting purpose, emphasis is to be given on the legal and regulatory aspects which may prescribe a particular valuation methodology and also a particular standard and premise of valuation in some cases. In such a case, the valuer has to undertake the valuation within the defined framework.

## 1. UNDERSTANDING PURPOSE OF VALUATION

Understanding the purpose of valuation is the first step of the valuation process. Proper analysis of the valuation engagement will assist the valuer in considering, evaluating, and applying the appropriate valuation approaches and methods to the subject interest. Is the valuation required for Minority or Controlling Shareholders? Is it for Regulatory purposes? Is it Equity or Enterprise Valuation?

In case valuation is for regulatory or financial reporting purpose, emphasis is to be given on the legal and regulatory aspects which may prescribe a particular valuation methodology and also a particular standard and premise of valuation in some cases. In such a case, the valuer has to undertake the valuation within the defined framework.

Enterprise valuation is the total of equity value (or market cap) and debt (net of cash and cash equivalents). Enterprise Value is also called as the Value of Company or business and it includes value of tangible and intangible assets. The value of Equity is a sub-set of the Enterprise Valuation.

Even when the value of Equity is derived, it needs to be allocated to its various shareholders. Some of the shareholders may be minority shareholders and some controlling shareholders with differential / preferred rights as to liquidation, voting rights, management control etc. Obviously, the value of all shareholders would be different and needs to be apportioned based on the exact contractual terms and complex valuation methodologies.

Determination of Standard of Value and Premise of Valuation is important to be determined before undertaking any Valuation engagement.

**“Standard of Value” is the fundamental condition under which a business is valued.**

### Types of Standard of Value:

- **Fair Market Value**  
The OECD defines Fair Market Value as the price a **willing buyer** would pay a **willing seller** in a **transaction** on the **open market**.
- **Fair Value**  
Ind AS 113 defines fair value as “the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date.”
- **Investment Value**  
Investment value can be defined as the **value to a particular investor** based on the investor’s investment

requirements and expectations.

**“Premise of value” relates to the assumptions upon which the valuation is based.**

### Types of Premise of Value:

- **Going Concern**  
Value as an ongoing operating business enterprise.
- **Liquidation**  
Value when business is terminated.  
*International Valuation Standards (IVS) 104, para 80.1 defines Liquidation Value as the amount that would be realised when an asset or group of assets are sold on a piecemeal basis.*  
*It further states that Liquidation Value can be determined under two different premises of value:*
  - (a) an orderly transaction with a typical marketing period,
  - or
  - (b) a forced transaction with a shortened marketing period.

## 2. INFORMATION REQUISITION FROM COMPANY

**The nature and extent of the information needed to perform the analysis will depend on the following:**

- Nature of the valuation engagement
- Scope of the valuation engagement
- Valuation date
- Intended use of the valuation
- Applicable standard and premise of value
- Assumptions and limiting conditions; and
- Applicable laws, regulations and professional standards.

### Such information includes:

- **Non-financial information** (Promoters, Management, Products, Industry, Competition, Strategy)
- **Shareholders information** (Equity Shares v. Preferred Shares with contractual rights, Minority v. Control)
- **Financial information** (Historical Annual Reports, Future Projections, Non Operating Assets).

## 3. FINANCIAL ANALYSIS AND NORMALISATION ADJUSTMENTS

Analysis of the past financial performance of a company is necessary for forecasting its future performance. Besides financial statements, the annual report of a company includes a lot of information considered important for analysis of the company. This includes -

- Management discussion and analysis report (MDA)
- Independent auditor’s report
- Accounting policies and disclosures
- Related party transactions
- Segment reporting and
- Other aspects.

Closely held companies require significant adjustments to estimate the normalised earnings of the company due to presence of related party transactions and the non-recurring and non-operating items also need segregation from the financial statements.

## 4. UNDERSTANDING INDUSTRY CHARACTERISTICS AND TRENDS

Knowledge of industry is necessary and essential for preparation and review of financial forecasts of any company as different Industries have different risk and return

characteristics and competitive advantages.

While forecasting, past data does provide a basis. However, newer technology and changing government regulations could have a significant impact on changing the business models of companies.

Understanding basis of classification of industries is important based on the principal product and services of the companies and their revenue contribution.

Internationally, for industry classification reliance is given upon Global Industry Classification Standard (GICS) developed by Standard & Poor's and Morgan Stanley. The GICS combines the companies in a sector, industry group, industry and sub-industry. The S&P BSE indices in India have also made an industry classification system in line with GICS.

## 5. FORECASTING AND VALIDATING COMPANY PERFORMANCE

Industry and competitive analysis, together with an analysis of the company's financial performance, provide a basis for forecasting performance. Forecasts of sales, expenses, profits (EBIT, EBITDA and PAT), capex and working capital provide the inputs for most valuation models.

IT IS THE WORK AND RESPONSIBILITY OF A COMPANY'S MANAGEMENT TO MAKE FINANCIAL PROJECTIONS OF ITS BUSINESS. THE ROLE OF A VALUER IS TO VALIDATE IT AND MAKE NECESSARY ADJUSTMENTS, WHEREVER REQUIRED.

*Guidance under IVS on reasonableness of Assumptions and*

The valuation date is the specific date at which the valuer estimates the value of the subject interest and concludes on his estimation of value. Date is critical for any valuation engagement as relative valuation (by benchmarking of comparable peer companies or transactions) is heavily dependent on the external market conditions of the industry, economy, etc., on that date.



### *information received from Management*

As required by IVS 105 *Valuation Approaches and Methods*, para 10.7, a valuer must assess the reasonableness of information received from management, representatives of management or other experts and evaluate whether it is appropriate to rely on that information for the valuation purpose.

### *Guidance under IVS on Investigations and Compliance*

As per IVS 102 (Para 20.2), Sufficient evidence must be assembled by means such as inspection, inquiry, computation and analysis to ensure that the valuation is properly supported, adequate for the purpose of the valuation.

## 6. CONSIDERING AND APPLYING APPROPRIATE VALUATION APPROACH

Purpose of valuation (regulatory or transaction), size of transaction (minority or control), stage of business, and business model determine valuation approaches to be applied in different circumstances.

Globally, there are three approaches to Valuation. Income, Asset and Market approaches. While the Income and Asset approaches result in fundamental valuation, the Market approach result in relative value of business.

### • **Income Approach**

The income-based methods of valuations are based on the premise that the current value of any business is a function of the future value that an investor can expect to receive from purchasing all or part of the business.

#### ○ **Capitalization of earning Method**

The capitalisation method basically divides the expected earnings of a business by the capitalisation rate.

#### ○ **Discounted Cash Flow Method**

Discounted Cash Flow (DCF) expresses the present value of the business as a function of its future cash earnings capacity. In this method, the valuer estimates the cash flows of any business after all operating expenses, taxes, and necessary investments in working capital and capital expenditure is being met. DCF method can result in either Enterprise value or Equity value based on the type of cash flows considered i.e. Free cash flow to firm (FCFF) or Free cash flow to equity (FCFE). The FCFF is discounted at the Weighted Average Cost of Capital (WACC) and the FCFE at the Cost of Equity (Ke). DCF method is most widely applied method for valuation of shares or business in practice for valuation.

### • **Asset Approach**

Another type of fundamental valuation approach is asset-based valuation that values a company on the basis of its underlying assets or resources it controls. Generally, the Net Asset Value (NAV) reflected in books does not usually include intangible assets enjoyed by the business and are also impacted by accounting policies which may be discretionary at times. NAV is thus not perceived as a true indicator of the fair business value. However, it is used to evaluate the entry barrier that exists in a business and is considered viable for



companies having reached the mature or declining growth cycle and also for property and investment companies having strong asset base.

- **Market Approach**

In this model, value is determined by comparing the subject, company or assets with identical or comparable assets or transactions for which price information is available. Comparable assets are generally happening in the same industry and preferably of the same size and region. This is also known as market approach to valuation.

- **Comparable (or guideline) companies multiples (CCM) method**

Market multiples of comparable listed companies are computed and applied to the company being valued to arrive at a multiple-based valuation. Finding comparable is a big task in itself and must be done after thorough scanning of the sector. It results in minority valuation. The selection of the appropriate multiple within the range requires judgement, considering qualitative and quantitative factors.

- **Comparable (or guideline) transaction multiples (CTM) method**

This technique is mostly used for valuing a company for M&A/investments. Valuation multiples are derived from the investment transactions that have taken place in the same industry (private companies) and applied to the company being valued to arrive at a transaction-based valuation. The biggest challenge in this method is that as most of the investments happen in closely held companies and only limited information about the transactions



Internationally, for industry classification reliance is given upon Global Industry Classification Standard (GICS) developed by Standard & Poor's and Morgan Stanley. The GICS combines the companies in a sector, industry group, industry and sub-industry. The S&P BSE indices in India have also made an industry classification system in line with GICS.

(including the year to date financials and valuation multiples) is available in public domain, it results in control valuation.

- **Market value method**

The market value method is generally the most preferred method in case of frequently traded shares of companies listed on stock exchanges having nationwide trading as it is perceived that the market value takes into account the inherent potential of the company.

### Choice of Valuation approaches

In selecting a model, data availability and quality/accuracy of data can be the limiting factors and require suitable adjustments considering industry trends and valuer's experience.

### In General, for Business Valuation on going concern basis, Income Approach is preferred.

- The **dominance of profits for valuation of share was emphasised** by the Indian Courts in *Commissioner of Wealth Tax v. Mahadeo Jalan's case* (S.C.) (86 ITR 621) and *Additional Commissioner of Gift Tax v. Kusumben D. Mahadevia* (S.C.) (122 ITR 38) where it was said that *"the real value of shares in a company will depend more on the profits which the company has been making and should be capable of making, having regard to the nature of its business, than upon the amount which the shares would realise on liquidation"*.
- In accordance with "Fair Value" standard for Financial Reporting i.e. Ind AS 113, preference should be given to valuation methods relying on Observable inputs. Thus, where the price information of an asset is available in an active market, it is generally considered to be the strongest evidence of value.

### Guidance under IVS 105, Valuation Approaches and Methods on choice of valuation methodologies

**Para 10.3**, the goal in selecting valuation approaches and methods for an asset is to find the most appropriate method under the particular circumstances. No one method is suitable in every possible situation.

**Para 10.4**, Valuers are not required to use more than one method for the valuation of an asset, particularly when the valuer has a high degree of confidence in the accuracy and reliability of a single method, given the facts and circumstances of the valuation engagement.

However, valuers should consider the use of multiple approaches and methods and more than one valuation approach or method should be considered and may be used to arrive at an indication of value, particularly when there are insufficient factual or observable inputs for a single method to produce a reliable conclusion. Where more than one approach and method is used, or even multiple methods within a single approach, the conclusion of value based on those multiple approaches and/or methods should be reasonable and the process of analysing and reconciling the differing values into a single conclusion, without averaging, should be



One of the final stages in the valuation process is the communication of the results of the valuation to the client or other user of the report. The form of any particular report will depend on the nature of the engagement, its purpose, its findings and the needs of the decision-makers who receive and rely upon it.

*described by the valuer in the report.*

**Para 10.5,** *It is the valuer's responsibility to choose the appropriate method(s) for each valuation engagement.*

**Para 10.7,** *Valuers should maximise the use of relevant observable market information in all three approaches.*

## 7. PERFORMING SCENARIO ANALYSIS, VALUE ADJUSTMENTS, DOCUMENTATION AND REPORTING

### • Scenario Analysis

As different valuation methods result in different value conclusions and achievement of forecast cannot be guaranteed as it is dependent on future industry trends and government policies which cannot be fully predicted, it is advisable to perform valuation under different scenarios.

### • Value Adjustments

The purpose, applicable standard of value, or other circumstances of an engagement may indicate the need to account for differences between the base value derived through a particular valuation methodology and the value of the subject interest. If so, appropriate discounts or premiums should be applied. Two such types of valuation adjustments in case of valuation of a business or shares include a **discount for lack of marketability (DLOM)** and a **discount for lack of control (DLOC)**.

### Non - Operating Assets

While the valuing of operating assets is generally reflected in the cash flow generated by the business, there are Non - Operating Assets which are not used in the operations including excess cash balances, and assets held for investment purposes.

Investors generally do not give much value to such assets and demerger or hive off may be required for optimum value creation. However while valuing a company, the value of such non-operating asset should be added separately to arrive at the enterprise value.

### • Documentation

Documentation is the principal record of information obtained and analysed, procedures performed, valuation approaches and methods considered and used, and the conclusion of value. The quantity, type and content of documentation are matters of the valuer's professional judgment. Sufficient documentation should be retained for information relied upon in the valuation process. Inclusion of such information in the report satisfies this standard.

***The Companies (Registered Valuers and Valuation) Rules, 2017 states that the documentation should be maintained by the valuer for a period of 3 years.***

### • Reporting

One of the final stages in the valuation process is the communication of the results of the valuation to the client or other user of the report. The form of any particular report will depend on the nature of the engagement, its purpose, its findings and the needs of the decision-makers who receive and rely upon it.

**As per the Companies (Registered Valuers and Valuation) Rules, 2017, the valuer shall state the following in his valuation report:**

- Background information of the asset being valued
- Purpose of valuation and appointing authority
- Identity of valuer and any other experts involved in valuation
- Disclosure of valuer interest/conflict, if any
- Date of appointment, valuation date and date of report
- Inspections and/or investigations undertaken
- Nature and sources of the information used or relied upon
- Procedures adopted in carrying out the valuation and the valuation standards followed
- Restrictions on use of the report, if any
- Major factors that were taken into account during the valuation
- Conclusion; and
- Caveats, limitations and disclaimers to the extent they explain or elucidate the limitations faced by the valuer, which shall not be for the purpose of limiting his responsibility for the valuation report.

## CONCLUDING THOUGHTS

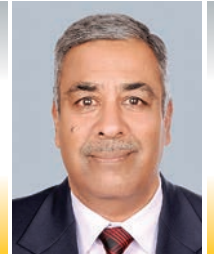
The valuation of securities or financial assets is done best when the complete process is followed beginning with understanding the purpose of valuation, making information requisition to company considering the purpose of valuation, doing financial analysis and normalisation adjustments, understanding industry characteristics and trends, forecasting and validating company performance, considering and applying appropriate valuation approach and performing scenario analysis, value adjustments, documentation and reporting. It would be prudent to say that the valuation of securities or financial assets is beyond the numbers and a successful valuer is one who follows the complete valuation process in true spirits. Needless to say, merely following the process in full and asking the right questions from the subject company/client would through useful information guide the valuer in presenting a true and fair view of the valuation of the Asset/ Company.

Though a lot of guidance is available under the International Valuation Standards (IVS) issued by the International Valuation Standards Council (IVSC) on various aspects of the valuation process, still while applying these principles, the experience of the valuer plays a crucial role in validation of company's business model, selection of appropriate methodologies and value conclusion.

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# Intangible Assets : An Exploratory Study on the Nature, Approaches and Methods of Valuation

*Intangibles are inherently different from physical and financial assets. These differences are responsible for the unique potential of intangibles to generate vast economic value and growth at both the corporate and national levels as well as pose serious difficulties in managing, measuring and reporting the value of intangibles. Various approaches and methods are available to overcome the valuation challenges, but efforts to improve the measurement and reporting of intangibles should continue. The challenge is the will to scale up the acceptable uniform regulatory framework for valuation of intangible assets.*



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Usually, all assets in business can be divided into one of three categories: monetary, tangible, and intangible. Historically, the assets of a traditional “bricks and mortar” company were either monetary or tangible, and intangible assets were items such as patents, trademarks and copyrights with commercial value. Today, more and more of business enterprises’ worth are tied up in intangible assets. Intangible capital is not a distinct factor of production as is physical capital or labor. Rather it is the “glue” that creates value from other factor inputs.

Intangibles have been around a long time. The first prehistoric cave dweller who was able to start fires on purpose possessed some extremely valuable knowledge. That know-how was an intangible asset. Early agrarian societies that farmed together possessed valuable organizational capital. Their collective effort created an intangible asset. The people who created an alphabet, or a calendar, or a system of numbers were early inventors of extremely important intangible assets. If only they had been able to patent their inventions or copyright their works. There is a dramatic increase in the number of companies whose value lies largely in their intangible assets; with relatively little or no value associated with their tangible assets. Traditional methods of valuation, based on accounting principles, where the value of the firm’s assets is a portion of the value, have systematically undervalued companies such as these.

The nature of the emerging knowledge economy, and the importance of intangible assets within it, is neatly summarized by Stanford economic growth theorist Paul Romer:

‘How can it be that we are wealthier today than people were 100 years ago? . . . This question is puzzling because, if you add up all the things we own, it is clear that the underlying quantity of raw materials has not changed over time,. . . The total physical mass here on earth is the same as it has ever been, and now we have to divide this up among a much larger group of people. So how could it be that we have more total wealth per person than we ever did before? . . . There’s only one explanation for this increase in wealth. We took this raw material that was available to us and rearranged it in ways that made it more valuable. We took stuff that was not very valuable and made it much more valuable. . . . What lies underneath this process of rearrangement are instructions, formulas, recipes, methods of doing things – the things accountants classify as intangible assets if they recognize them at all. They tell us how to take something that is not very valuable and rearrange it into a new configuration that is more valuable.’

As the name suggests, Intangible Assets are assets which are not tangible in nature. Typically any organization which is run either for profit or non-profit motive has to use a combination of physical assets and intangible assets to derive its objectives. By the end of the last century the economic literature has witnessed an increased interest in intangible assets, intellectual capital, knowledge assets, and other related terms. An operational definition of intangible assets is given by Zaman Gh. (2009, pg.944) comprising identifiable non-monetary goods category, without physical substance, specific to the capital and intellectual property, including knowledge of the results of the research and development (embodied in the concept studies, scientific, treatises, documents, patents, innovative certificates etc.), brands or trademarks, trade secrets and industrial, advertising titles, software, copyrights, licenses to use , training activities and education etc.

There are too many different definitions and classifications for intangible assets at micro and macro level, which causes its’ recognition and measurement difficulties;

- It is difficult to separate extraneous users of the intangible assets (the problem of public good arises), so company cannot adopt all benefits from investment in such assets
- It is difficult to evaluate reliably inputs needed, future products, time, amount of the benefit for a company from these assets (the problem of uncertainty)



- The transfer or exchange of intangible assets is complicated on as it has no physical form (the problem of making agreements)
- International Accounting Standards (IAS 38 "Intangible assets") defines Intangible Assets as identifiable non-monetary asset, without physical substance. An asset is a resource that is controlled by the entity as a result of past events (for example, purchase or self-creation) and from which future economic benefits (inflows of cash or other assets) are expected. To recognize an intangible asset, IAS 38 recommends three critical attributes of an intangible asset:
  - identifiability;
  - control (power to obtain benefits from the asset);
  - future economic benefits (such as revenues or reduced future costs).
 Intangibles are non-physical factors that contribute to, or are used in; the production of goods or the provision of services or that are expected to generate future productive benefits to the individuals or firms that control their use.

### CATEGORIES OF INTANGIBLE ASSETS

- **Marketing-related intangible assets:** Trademarks, Trade Names, Service marks, Collective marks, Certification marks, dress (unique color, shape, or package design), Newspaper mastheads, Internet domain names and Noncompetition agreements
- **Customer-related intangible assets:** Customer lists, Order or production backlog, Customer contracts and related customer relationships and Non-contractual customer relationships
- **Artistic-related intangible assets:** Plays, Operas, Ballets, Books, Magazines, Newspapers, other literary works, Musical works such as compositions, Song lyrics, Advertising jingles, Pictures, photographs, Video and audiovisual material, including motion pictures, Music videos, and television programs
- **Contract-based intangible assets:** Licensing, Royalty, Standstill agreements, Advertising, construction, Service or supply contracts, Lease agreements, Construction permits, Franchise agreements, Operating and broadcast rights, Use rights such as drilling, water, air, mineral, timber cutting, Servicing contracts such as mortgage servicing contracts and Employment contracts
- **Technology-based intangible assets:** Patented technology, Computer software and mask works, unpatented technology, Databases, including title plants and Trade secrets, such as secret formulas, processes, recipes. Specifically intangible assets may be defined as **Patents:** Patents provide exclusive rights to produce or sale new inventions
- **Copyrights:** Copyrights provide their owner with the exclusive rights to reproduce and sell artistic works, such as books, songs or movies
- **Trademarks and Trade names:** Trademarks and trade names include corporate logos, advertising, jingles and product name that have been registered with the government and serve to identify specific companies and products
- **Franchise licenses:** The purchaser of a franchise licenses receives the right to sale certain products or services and to use certain trademarks or trade names. This right is valuable because they provide the purchaser with immediate customer reorganization
- **Government licenses:** The purchaser of a government licenses receives the right to engage in regulated business activities
- **Goodwill:** Goodwill equals the amount paid to acquire a company in excess of its net assets at fair market value. It



Intangible Assets are assets which are not tangible in nature. Typically any organization which is run either for profit or non-profit motive has to use a combination of physical assets and intangible assets to derive its objectives. By the end of the last century the economic literature has witnessed an increased interest in intangible assets, intellectual capital, knowledge assets, and other related terms.



should be noted that while goodwill is technically an intangible assets, it is usually listed as a separate item on a company's balance sheet.

### WHAT IS NOT AN INTANGIBLE ASSET

A few economic concepts that are not intangible assets are worth mentioning: ■ Competitive advantage ■ Market share ■ Added value ■ Efficiency ■ Repeat business ■ Customer loyalty.

### VALUATION OF INTANGIBLE ASSETS

Intangible assets have strategic importance to future of an entity and yet it does not find place in traditional bottom line thinking and contemporary accounting practices. This approach was fine till the time business used to derive its value only from tangible asset. However in today's knowledge based industry, any modern entity derives its value from a mix of tangible assets and intellectual capital. The proportion of intangible assets as a part of the overall total assets is often greater than the proportion of tangible assets. Yet intangible assets do not appear in financial statements due to lack of transparency or absence of a benchmark market.

"Alice: Would you tell me, please, which way I ought to go from here?"

The Cheshire Cat: That depends a good deal on where you want to get to

Valuing intangible assets is a long drawn, complex and controversial issue and is viewed with skepticism because both nationally and internationally there are no clearly defined principles and rules regarding them. Despite their increasingly significant role in enhancing firm value it is difficult to obtain a reliable estimate value for these assets.

**Approaches to Valuation:** There are three acceptable approaches to valuation. They are Cost based, Income Based and Market Based. The nature of each approach is as follows:

**A) Income Based approach:** Future earnings which are attributable to the Intangible asset are forecasted over its useful life and discounted to its present value. This approach is appropriate in case of technology, customer related intangibles, trademarks, operating licenses and non competition agreements.

#### METHODS OF VALUATION UNDER INCOME APPROACH:

- **Excess Earnings Method:** this method removes the earnings attributable to net tangible assets from the total earnings of the Company. The balance earnings represent earnings on account of intangible assets. The same is divided by an appropriate capitalization rate to extrapolate the combined value of Goodwill and other intangible assets.
  - **Relief from Royalty Method:** This method is based on the assumption that a brand owner can license the brand to a hypothetical operating company. The operating company in turn would pay royalty at an expressed rate of sales. The present value of all future cash inflows from royalty will be the value of the Brand.
  - **Multi Period Excess Earnings Management:** This method first calculates the future cash flows from the business in which the intangible asset is engaged. From these cash flows, cash flows attributable to tangible assets and other contributory assets are deducted to zero in on cash flows attributable purely for the Asset in question. They are discounted to present value to find out the value of the Intangible asset. A variant of the Multi period Excess Earnings Management is the Distributor method which attempts to allocate earnings attributable to customer relationships based on profit margins earned by Distributors.
  - **Greenfield Method:** The assumption in this model is that the subject to asset is the only asset owned by business as of the valuation date. Then assumptions are made regarding start-up costs and further capital investment required to utilize the subject asset. These assumptions are made with a view to developing an operation comparable to one in which the subject asset is actually utilized. In this method it forecasts the cash flows attributable to the subject asset by subtracting necessary investments. The projected cash flows are then discounted to present value to determine income based value of the Intangible assets.
- B) Market Approach:** It estimates the value of the asset with reference to market activity i.e. transactions involving identical or similar assets. This approach is useful for valuing broadcast spectrum, internet domain names and taxi medallions.

#### METHODS OF VALUATION UNDER MARKET APPROACH:

- **Guideline Transaction Method:** In this method, value of an intangible asset is derived based on pricing multiples derived from comparable transactions. Valuer should carefully select the volume of transactions from transaction databases so as to arrive at an accurate multiplier.
- **Guideline Public Company Method:** In this method, value of an intangible asset is derived based on identifying key ratios of similar public companies and uses them to derive the value of other business. By its very nature, this method has very little applicability because an intangible asset will be rarely traded

in public.

**C) Cost Approach:** In this approach value of the Intangible asset is determined as the cost of replacement or reproducing of a similar asset or an asset providing similar service.

#### METHODS OF VALUATION UNDER COST BASED APPROACH:

There may be situations where there is no active market for Intangible Assets and so employing the Market approach would not yield proper results. However as sanity check to value derived from Income approach; a valuer may be constrained to also employ the Cost Based approach.

- **Replacement Cost:** It is based on the economic assumption that no investor will pay no more for an asset than the cost to obtain by purchasing a substitute asset of equal utility. This method has limited application for Intangible assets as it might not be possible for an investor to identify a substitute Intangible asset in the market.
- **Reproduction Cost:** It is based on the same economic assumption but with a difference that now investor will try to find a substitute by recreating the asset in question. This method will be still easier for investor to apply as costs required for making a similar asset can be computed.
- **Choice of Valuation Approach:** To sum it up, a valuer should always try to employ the Income based approach for determining value of Intangible assets. However in case it is virtually impossible to attribute earnings and cash flows to the subject asset, then valuer will have to resort to the Market approach and Cost Based approach. As the underlying spirit of any valuation exercise is that value should always be determined from more than one method, so value determined based on Guideline Transaction Method may be cross checked with value determined based on Replacement/Recreation method.

#### QUALITATIVE AND QUANTITATIVE VALUATION

IP valuation is both qualitative and quantitative in nature, as calculations are always based on qualitative analysis. Qualitative methods provide a value guide through the rating and scoring of IP based on factors which can influence its value. It examines, at a micro level: the quality of intangible assets themselves; their position and importance, relative to other business drivers; the broader industry within which the business operates; the potential value for business's competitors and potential competitors, the macro-economic outlook, over the useful life of the intangibles for the economy in which the business operates. The qualitative study is used to formulate (and justify) assumptions on which the financial models, used to determine a numerical value to the IP under consideration, will be based.

#### OPTION PRICING APPROACH – A NEW FRONTIER

Intangibles are all options on tangible assets, intangible assets and intellectual capital. The option pricing method represents a relatively new path for the evaluation of intangibles. Myers (1984) has been the first to recommend the application of the option-pricing theory (Merton, 1973; 1998) to the valuation of a particular intangible asset that was research and development (R&D). He states the discounted cash flows method (DCF) is of "no help at all" and "the value of R&D is almost all option value". Kaplan (1986), through investments' cases, concluded that DCF methods were unable to catch the value of "intangible benefits" such as flexibility and learning. According to Baldwin & Trigeorgis (1993), the solution to under-investment and lack of competitiveness should be found in



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the management of real options, and Faulkner (1996) analyzing the Japanese investment decisions, advises to apply real option pricing methods for evaluation of R&D investments. Valuation techniques based on real options are perhaps the most promising area for valuation of intangible assets, the point is how to identify and evaluate this “intangible value” represented by opportunities that are real options. As regards techniques for calculating the optional value of intangibles, the Black & Scholes formula, or the decision tree analysis applied to investments should be appropriate for the most of the cases.

### CONSIDERATIONS IN VALUATION METHODOLOGY

- Choosing an appropriate valuation methodology. Although market methods are best where available, the lack of market evidence means that income methods are more often used
- The determination of appropriate assumptions requires experience and judgment due to the subjectivity involved
- The process of selecting an appropriate royalty rate range based on market evidence needs to be rigorous, as the value implications of a small change in the royalty rate can be significant
- The determination of the cost of capital requires experience and judgment. The cost of capital should be consistent with the risks and rewards of the intangible asset being valued
- Projections need to be carefully reviewed as this will impact on the value of the intangibles and will have a bearing on future impairment reviews
- Avoiding double counting of intangible value as two or more intangible assets may contribute to the same stream of earnings e.g. a well-known trade mark and the underlying technology.

The company is not only a center for the production of profit and capital accumulation, but also a collection center for technological and organizational knowledge and experience, and when all these forms of accumulation evolve into a balanced way, the enterprise carries out its mission for which it was created. The value of an enterprise can be measured by the size of its material heritage, but also subsists in the ability to acquire, generate and distribute intangible resources. In the last two decades, intangible assets have grown in importance in the economic system and in determining the success of a business enterprise and it appears that the traditional economic and managerial concepts are not adequate enough to provide answers and accurate and satisfying interpretations to the new reality of industrial and corporate systems where the change is attributed to the creation and proper management of intangible assets.

The measurement of the total value of intangibles has always been problematic. The task is made harder by the fact that values can change rapidly. For instance, the image and hence value of a brand can be seriously harmed by a product scandal of one sort or another. Equally, the value attributable to a firm’s workforce could

be reduced significantly by the loss of key people. But the fact that it’s hard doesn’t mean that it shouldn’t be attempted.

### VALUE OF INTANGIBLE ASSET NOT YET RELEASED

To value productions or new works not yet produced and marketed, one may follow basically the same rules as presented above, but with some notable exceptions. First, he must investigate with great care what the projected economic life will be on the new asset. That means asking question, how much use has been realized out of similar rights, licenses, lists or other assets. The estimate of a usable economic life should not just be some “wild guess”. If the asset is to have a long economic life, costs are to be factored into updating the asset to keep it valuable. Since one does not have a track record on this asset, projections and cost projections must be made to forecast, best and a conservative net operating income for the asset. This is called a “proforma” in financial circle. The Performa on the new asset, divide the forecasted net income by its proposed economic life and divide by the anticipated capitalization rate to arrive at the estimated present value of that intangible asset.

### THE VALUE PARADOX OF INTANGIBLE ASSETS

Accounting for intangible assets within the firm confronts the Value Paradox in terms of the problem of capture and accounting. Is it possible to capture the value of such assets, and if so, how? Is it desirable to measure their value? Who actually requires such measurement, and to what end? Once again, the Value Paradox is this: intangible assets have evident value, yet this encompasses inadequate measure to capture value.

### REASONS FOR VALUING INTANGIBLE ASSETS

Since there is no universally accepted methodology for valuing intangible assets, the technique adopted in any particular instance is based on the reason that the valuation is required. The following are the major reasons for valuing intangible assets:

- Management of the Firm**  
Management needs to measure the performance of each aspect of the business. Ignoring either the benefits or cost of intangible assets would lead to sub-optimal decision making. Activities such as investment in new productive capacity or formulating strategy are examples of such management activities.
- Mergers and Acquisitions**  
When entire business or stand-alone subsidiaries are bought or sold, the value of the intangible assets must be taken into account.
- Reporting to Stakeholders**  
Management’s responsibility to report to stakeholders often extends beyond the requirements of GAAP statements. It is common to report the impact of the firm on the environment and the community within which the firm operates. The impact of the firm on the human capital and health of both its employees and the local community is often considerable and it may be desirable to include these effects in the firm’s



**The measurement of the total value of intangibles has always been problematic. The task is made harder by the fact that values can change rapidly. For instance, the image and hence value of a brand can be seriously harmed by a product scandal of one sort or another. Equally, the value attributable to a firm's workforce could be reduced significantly by the loss of key people. But the fact that it's hard doesn't mean that it shouldn't be attempted.**



reporting objectives. The acquisition of productive intangible assets, whether through purchase or internal development, should be reported in a manner that is both transparent and reliable.

d) **Amortization and Impairment**

IAS 38 requires an entity to assess the useful life of its intangibles into those with finite and those with indefinite lives. Amortization applies to those with finite lives and requires an estimate of the useful life of the asset. There is a rebuttable presumption that the maximum amortization period is 20 years. Those with indefinite lives are not systematically amortized but must be assessed at least annually for possible impairment adjustments. According to IAS 38, intangible assets have an indefinite life when "there is no foreseeable limit to the period over which the asset is expected to generate net income or free cash flows.

## CONCLUSION

Companies operate in a dynamic and challenging business environment with a constant battle to become and stay competitive and achieve sustainable growth. The business environment has transformed rapidly in the past decade due to major globalization and internationalization processes, which have created a demand for mapping and understanding business value and core competences. Intangible and knowledge assets have become a key requirement for companies to present a sustainable

competitive advantage. Parting from the traditional, the focus within companies and research is shifting to intangible assets. Analysis shows that the concept of intangible assets, although has been examined by many researchers, is still not clearly understood - there is no universal definition of this economic category, the researchers emphasize different characteristics of intangible assets and, although it is possible to distinguish the common points in definitions, which allows the standardization of the concept at some level, but there still remain a lot of divergent criteria of the analysis of intangible assets, what makes it a very complicated concept and a basic measurement problem. Intangible assets' valuation process is very complicated because of its unique features, and the approaches and methods used have many drawbacks: a lack of consistency, their insufficient credibility; subjectivity, when for every company model is individualized; because the models are not able to perform a comprehensive evaluation of intangible assets. The high level of subjectivity in choosing the indicators, reflecting company's activities in the most proper way for a company does not allow an objective evaluation of intangible assets, which leads to the emergence of non comparability between companies.

Intangible assets reached prominence in the business world in the late 20<sup>th</sup> century and will surely persist to capture the centre stage in the future. Intangibles are inherently different from physical and financial assets. These differences are responsible for the unique potential of intangibles to generate vast economic value and growth at both the corporate and national levels as well as pose serious difficulties in managing, measuring and reporting the value of intangibles. Various approaches and methods are available to overcome the valuation challenges, but efforts to improve the measurement and reporting of intangibles should continue. The challenge is the will to scale up the acceptable uniform regulatory framework for valuation of intangible assets. CS

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# Valuation Approaches and Methodologies

*Approaches of valuation mean, a set of rules or assumptions used for the purpose of carrying on the valuation of the business, but method is the procedure that will be used for valuation. The present article discusses three approaches to valuation of financial assets. The appropriate approach and method for valuation should be selected on the basis of the purpose of valuation and information available in each individual case.*



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**A**pproach can be defined as a “way of dealing with things”, while Method is “the way” or “the process”. We can tackle a situation on the basis of our approach towards it, whereas we may succeed or fail in solving the situation on the basis of the method that we use to tackle that situation.

In other words, approaches of valuation mean, a set of rules or assumptions used for the purpose of carrying on the valuation of the business, but method is the procedure that will be used for valuation.

The International Valuation Standards Council (IVSC) is an independent, not-for-profit organisation that acts as the global standard setter for valuation practice and the valuation profession, serving the public interest. This Organisation headquartered in London issues various standards on valuation from time to time.

## INTERNATIONAL VALUATION STANDARDS

The IVS are valuation standards for assets and liabilities on a global basis. The IVS are published by the International Valuation Standards Council (IVSC), who began publishing international standards in the 1990's. IVSC does not require compliance with IVS. Compliance is a matter of choice, agreement or regulation by another authority. The use of the IVS continues to grow as the global economy becomes increasingly interconnected. IVS includes a Glossary, Framework, five general standards (IVS 101, 102, 103, 104 and 105) that apply to all assignments, and six asset standards (IVS 200, 210, 300, 400, 410 and 500) that apply depending upon the type of asset being valued. IVS 105 provides for the Valuation Approaches and Methods applicable to valuation. IVS 500 covers the financial Instruments and the valuation approaches and methods related to the valuation of the financial instruments.

## IVS 105 VALUATION APPROACHES AND METHODS

- The three approaches described and defined below are the main approaches used in valuation. The principal valuation approaches are:
  - a) market approach,
  - b) income approach, and

- c) cost approach
- The goal in selecting valuation approaches and methods for an asset is to find the most appropriate method under the particular circumstances. No one method is suitable in every possible situation. The selection process should consider, at a minimum:
    - a) the appropriate basis(es) of value and premise(s) of value, determined by the terms and purpose of the valuation assignment,
    - b) the respective **strengths and weaknesses** of the possible valuation approaches and methods,
    - c) the **appropriateness of each method** in view of the **nature of the asset**, and the approaches or methods used by participants in the relevant market, and
    - d) **Reliable information**.

There can be various methods under each approach but there cannot be various approaches under each method.

Each approach further has different methods. Methods are the procedures to carry out the task at hand.

## MARKET APPROACH

As the name suggests, this method is based on the market value of the asset/s in consideration. It can be derived from the value of the same or similar asset.

The market value of an asset or a business can be defined as the value of the same or the similar asset or business, that a buyer is willing to pay and a seller is willing to accept, in an arm's length transaction. Here, it is assumed that both the parties act in full knowledge of the relevant facts, and no one is under compulsion to strike the deal.

The market equations play an important role in the valuation of any marketable product. The dynamics of demand and supply correctly values the asset in question.

This approach is widely accepted in the cases where same or similar assets are traded in the open market their values easily available. No adjustments are required to be made.

The major drawback of this approach is that at times there is a lack of sufficient number of companies and data to get the comparable prices.

There are two methods under this approach:

- a. Comparable transactions method
- b. Comparable companies' method

## COMPARABLE TRANSACTIONS METHOD

Under this method, the value is determined on the basis of multiples derived from valuations of similar transactions in the industry.

This technique is mostly used for valuing a company for M&A, the transaction that have taken place in the industry which are similar to the transaction under consideration are taken into account. The comparable transactions method uses variety of different comparable evidences, which forms the basis of the comparison.

### COMPARABLE COMPANIES' METHOD

This method uses multiples derived from valuations of listed comparable companies operating in similar industry. Under this approach businesses of similar size in the same industry are compared for valuation purposes. In this approach, value is determined by comparing the subject company or asset with other companies or assets in the same industry, of the same size, and/or within the same region, based on common variables such as earnings, sales, cash flows, etc. This is because the companies with similar characteristics should trade at similar multiples, other things being equal.

This method of valuations is benefitted by widely available data required for valuation. But at times, this data maybe influenced by the temporary market conditions.

#### Price-Earnings multiple

- The price-earnings ratio is also sometimes known as the price multiple or the earnings multiple
- It is the ratio which is calculated by dividing the market value price per share by the earnings per share
- The most common measure of valuation using a multiple of accounting earnings.

#### Market Price to Book value multiple

- It is used to compare a stock's market value to its book value
- It is the ratio of market price of a company's shares (share price) over its book value of equity
- The book value of equity, in turn, is the value of a company's assets expressed on the balance sheet

#### Price to Revenue multiple

- It compares a company's stock price to its revenues
- Also known as Price-To-Sales Ratio

#### Enterprise value multiple

- Enterprise value multiple is the comparison of enterprise value and earnings before interest, taxes, depreciation and amortization
- Enterprise Value (EV) = Market Capitalization + Total Debt – Cash
- $EV/EBIT$  (Enterprise Multiple) = Enterprise Value / Earnings Before Interest & Taxes

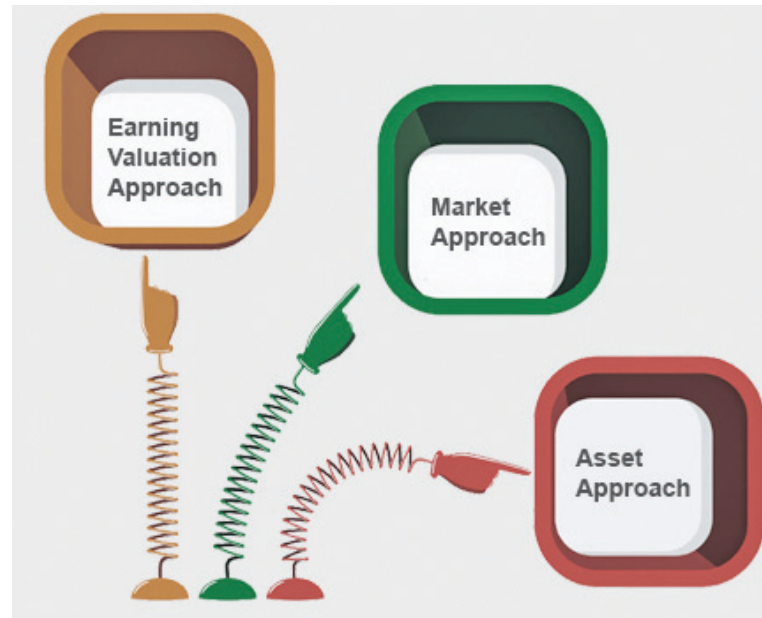
The following are the non-exhaustive list of certain special considerations that may form part of a market approach valuation:

1. Anecdotal or "rule-of-thumb" valuation benchmarks are sometimes considered to be a market approach.
2. Adjust for differences between the subject asset and the guideline transactions or publicly-traded securities.
3. Some of the most common adjustments made in the market approach are known as discounts and premiums.

### INCOME APPROACH

The income approach analyses the expected economic benefits that investors anticipate from a real investment. This approach

The market value of an asset or a business can be defined as the value of the same or the similar asset or business, that a buyer is willing to pay and a seller is willing to accept, in an arm's length transaction. Here, it is assumed that both the parties act in full knowledge of the relevant facts, and no one is under compulsion to strike the deal.



is mainly defined as the valuation method whereby the valuer calculates the present value of future benefits associated with ownership of the equity interest or asset.

Income is of utmost importance for any economic activity. The main reason to carry on a business activity is to generate income. Hence, we can value a business or an asset on the basis of its potential to earn the expected income.

Under income approach valuation is carried out either by,

- a. Capitalisation method
- b. Discounted cashflows method

This approach of valuation is widely accepted because it projects data as per the needs and the stages of business. But the major drawback is that at most of the times, the future cashflow projections are hypothetical.

This approach is mainly preferred when the income producing ability of the business is the major element and reasonably accurate estimates of future flow of income can be easily made.

### CAPITALISATION METHOD

This method of income approach of valuation calculates the net present value of the future earnings or cashflows. In this method the business value is calculated by dividing the annual future earnings by the rate of return expected by the business.

### DISCOUNTED CASHFLOWS METHOD

A valuation method used to estimate the absolute value of a company. It uses future free cash flow projections and discounts them to arrive at a present value estimate, which is used to



evaluate the potential for investment. In Discounted Cash Flow (DCF) valuation, the value of an asset is the present value of the expected cash flows on the asset.

In DCF valuation, we need to estimate the following:

- **The life of the asset**  
Every asset can be used productively for a particular time period, after which it either becomes obsolete, or does not remain beneficial to use. This life of the asset is taken into consideration for calculation of the discounted cashflows.
- **The cash flows during the life of the asset**  
The asset when put to use generates cash flows during its life. The cashflows at various points of time in future are estimated.
- **The salvage value or the terminal value of the asset**  
Each asset has a useful life of certain years and at the end of such useful life, the asset can either be scraped or be converted for some other use. This process involves certain cash inflows and outflows. The net cashflows at the end of the useful life of the asset is called the salvage value or the terminal value of the asset.

#### The discount rate to apply to these cash flows to get present value

The discount rate is the expected rate of return of the business for all the activities carried on by it. The discount rate can be calculated in many different ways.

#### Internal rate of return (IRR)

- It is the interest rate at which the net present value of all the cash flows (both positive and negative) from a project or investment equals zero
- The internal rate of return is usually used to calculate the profitability of investments made in a financial product or projects

#### Weighted average cost of capital (WACC) method

- It is the average rate of return a company expects to compensate all its different investors. (Discount Rate)
- It is calculated by finding out cost of each component of a company's capital structure, multiplying it with the relevant proportion of the component to total capital and then summing up the proportionate cost of components
- $WACC = r(E) \times w(E) + r(D) \times (1 - t) \times w(D)$

Where  $r(E)$ - cost of equity.

**w(E)**- weight of equity in the company's total capital. It is calculated by dividing the market value of the company's equity by sum of the market values of equity and debt.

**w(D)** is the weight of debt component in the company's capital structure. It is calculated by dividing the market value of the company's debt by sum of the market values of equity and debt.

$r(D) \times (1 - t)$  represents the after-tax cost of debt i.e. the after-tax rate of return which the debt-holders need to earn till the maturity of the debt.

#### Capital Asset Pricing Model

- This method explains the relationship between the expected return and the risk of the business
- It helps determine a theoretically appropriate rate of return of a business. This rate of return can then be used as the rate

of discount for the future cashflows of the business.

## VARIATIONS OF DCF

### Free cash flow (FCF)

- It is a measure of a company's financial performance, calculated as operating cash flow minus capital expenditures.

### Net Present Value (NPV)

- It is a method of determining the current value of all future cash flows generated by a project after accounting for the initial capital investment
- It is calculated by subtracting present value of cash inflows from the present value of cash outflows over a period of time.
- It can be used for either acquisitions or future capital projects
- It is a core component of corporate budgeting
- $NPV = (\text{Cash inflows from investment}) - (\text{cash outflows or costs of investment})$ .

### Adjusted Present Value (APV) method

- The formula for adjusted present value is:  
 $NPV \text{ (of a venture financed solely with equity capital)} + PV \text{ of financing}$

### Free Cash Flow to Equity method

- It is used to calculate the equity available to shareholders after accounting for the expenses to continue operations and future capital needs for growth.

## COST APPROACH

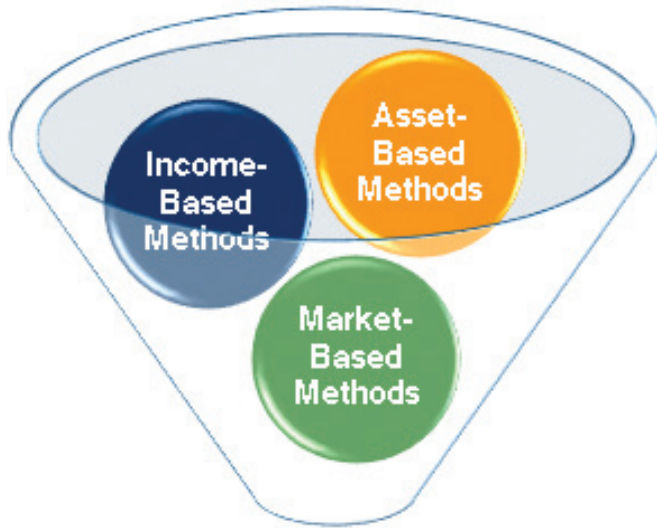
The Cost Approach of Valuations is also known as the Asset Approach of Valuation.

The underlying assumption of this approach is that the value of a business is the total value of all of its assets less the liabilities.

- **The adjusted net asset value method is a business valuation technique that changes the book values of a company's assets and liabilities to reflect their estimated current fair market values better. By adjusting asset or liability values up or down, the net effect offers values that can be used in going-concern assessments or liquidation scenarios.**



**The income approach analyses the expected economic benefits that investors anticipate from a real investment. This approach is mainly defined as the valuation method whereby the valuer calculates the present value of future benefits associated with ownership of the equity interest or asset.**



This value differs on the basis of the life expectancy of the business. The value is much more, when the business is valued on going concern basis than when it is valued for liquidation.

This approach of valuation is used when the value of a business is directly based on the value of its underlying tangible assets and investments and not on its ability to generate income.

Also, the assets in consideration should be such that they can be recreated quickly, if need be, without any restrictions.

This approach is not suitable when the business has assets that cannot be valued in the monetary terms. Like some inhouse procedures or techniques, which are very important in the business, but which has no monetary value, as it was not purchased.

Besides these, necessary adjustments should be made for the additional indirect costs to be incurred and for depreciation. Following methods are used under this approach:

- a. Adjusted Net Asset Value
- b. Book Value
- c. Replacement cost

### ADJUSTED NET ASSET VALUE

The adjusted net asset value method is a business valuation technique that changes the book values of a company's assets and liabilities to reflect their estimated current fair market values better. By adjusting asset or liability values up or down, the net effect offers values that can be used in going-concern assessments or liquidation scenarios.

The adjusted net asset value method includes all the recorded and unrecorded assets and liabilities of the business after making necessary adjustments. The difference between the fair value of adjusted asset and total fair value of adjusted liabilities is the "adjusted net asset value" of the business.

This method is generally used in the cases where the business is capital-intensive and valuation on the basis of income or market approach is not feasible.

### BOOK VALUE

The Book Value of an asset is the carrying value of the asset or the liability in the Balance Sheet or the value at which the asset or liability is recorded in the balance sheet.

The book value is the total of asset less total of liabilities, or the net worth of the business. It is less likely to reflect the intangible assets of the company.

This method is based on the historical cost of the items of the balance sheet. This may not give the clear picture of the fair market value of these items. The fair market value may be much greater or lesser. Hence this method of valuation may not give the accurate answers, but it is useful when the other methods of valuation cannot be used. Also, since the figures for calculations are easily available from the books of the business, this method of valuation does not consume time for data collection and quick calculations are possible.

### REPLACEMENT COST

This method of cost-based valuation takes into account the cost of replacement of an asset.

Replacement cost is the amount a business will have to spend as on the day of valuation, to replace the asset in question.

This method of valuation can be used only when the same asset as that being valued or as asset similar to the asset being valued is available in the market, or it can be reproduced within reasonable timeframe.

To calculate the replacement cost, first the cost to be incurred to create an asset with the same or similar utility is calculated. Thereafter adjustments in relation to the depreciation on the current asset need to be made. The remaining amount after the adjustment is the cost of replacement of the asset.

### COST CONSIDERATIONS

- The cost approach should capture all the costs that would be incurred by a typical participant. The costs are majorly divided into direct and indirect
  - An asset acquired from a third party would presumably reflect their costs associated with creating the asset as well as some form of profit margin to provide a return on their investment
  - The actual costs incurred in creating the subject asset (or a comparable reference asset) may be available and provide a relevant indicator of the cost of the asset. But a few adjustments must be made so that the cost fluctuations between the date on which the cost was incurred and the valuation date and any exceptional costs or savings that are reflected in the cost data, but would not arise again, can be reflected.
- These are the three approaches to valuation of financial assets. The appropriate approach and method for valuation should be selected on the basis of purpose of valuation and information available in each individual case. CS

# Valuation Views and Controversial Issues - Factors Influencing Security Valuation

*With the recent eye-turner WalMart -Flipkart deal, experts are of the opinion that a lot of matters inside the deal will be intrigued, reviewed and validated by regulators. Keeping view of the Vodafone-Hutch deal, Indian authorities may closely monitor the legal and financial aspects of the deal for the very reason of its complexity and structuring. In such evaluations, debates around valuation take center stage.*



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## BRIEFING TO THE TOPIC

In modern finance, the objective of an enterprise is to maximize shareholders' wealth. This was a stark shift from traditional profit maximization theory. Ever since then, the topic of valuation has gained more importance in business parlance. As a follow on, regulatory attention to the subject has also been increasing. Business valuation is subjective, biased, and at times, speculative. A transaction - in other words, a deal - assumes weight to intuition over rationale. Often so, a rationale adjustment is made as a postmortem to the deal, justifying the value. Market forces of demand and supply, coupled with numerous other *factors*<sup>1</sup>, mark the closure of a deal. Hence, it is not possible to come up with an absolute "value" of a security; for it is always relative. Two valuers may have two different values for the same security or asset class. And, this may happen even if both of them used the same valuation methods or approaches. Valuers often make up reasons, facts, and assumptions, to substantiate their results.

Valuation is neither a science nor an art. Disclaimers and caveats provide relief to valuers, helping them wash their hands off easily at times of trouble. A valuer runs through a number of facts and assumptions during a valuation work. But, there are only a handful of valuation methods that are generally accepted. The valuer's task is to bring in the various facts and assumptions to the model, making appropriate insertions to the method he chooses.

But valuation has less to do with valuers. The real stakeholders are - the parties themselves, the regulators, and in some cases, the public too. In developed financial markets, there are mechanisms by which stakeholders have legal protection to valuation related differences. Concepts such as *fairness opinion* or *fair value* protect the interest of minority shareholders, other stakeholders, lenders, etc. There are law firms that operate only in this area. They provide litigation support to government, investors, minority shareholders, holders of other classes of shares/securities, lenders and creditors, by a specialized engagement called class

action suits. In India, things are different. The qualitative aspects of capital protection, minority interest, anti-dilution, are often not taken into consideration, or perhaps aren't adequately supported during valuation. There are only limited options for making assumptions which may or may not stand the test of time and law.

Views and counterviews around valuation arise only for one reason - the number of stakeholders involved. Different stakeholders have different expectations and objectives under different capacities. In India, emotion adds fuel to the matter, making valuation even more complex. The challenge is to create a common platform that will work in the larger interest of the stakeholders involved. The recent regulatory amendment [The Companies (Registered Valuers and Valuation) Rules, 2017] attempts to build a mechanism around the same, where valuers will have the independence to work in common interest and apply rationale, technical skill and experience to come up with results.

## JUDICIAL ASPECTS

### Valuation - A question of law or fact?

In law, a question of law, also known as a point of law, is a question that must be answered by applying relevant legal principles to interpretation of the law. Such a question is distinct from a question of fact, which must be answered by reference to facts and evidence as well inferences arising from those facts. At this juncture, it becomes imperative to discuss whether valuation is an issue of fact or issue of law.

### Judicial Pronouncements

Some of the salient dicta of Courts in relation to valuation principles and valuation reports are discussed below:

- Valuation is basically a question of fact<sup>2</sup>
- The stakeholders need to apply their mind before accepting a valuation report provided by a valuer<sup>3</sup>
- Valuation is a question of law only when it is required to check whether the correct principles of valuation applicable to a given case were followed or not; having said that the valuation work which involves assumptions, is a question of fact
- Courts shall not interfere with the valuation of an expert unless it is shown that some well accepted principles of valuation have been departed from without any reason, or the approach adopted is patently erroneous, or the relevant factors have not been considered by the valuer, or the valuation has been made on a fundamentally erroneous basis, or there is a fundamental error going to the root of the matter

<sup>2</sup> Supreme Court Observation: *Duncans Industries vs. State of UP*

<sup>3</sup> Supreme Court Observation: *Duncans Industries vs. State of UP, G.L. Sultania and Another vs. SEBI & Another*

<sup>1</sup> Listed in this article



**A valuer runs through a number of facts and assumptions during a valuation work. But, there are only a handful of valuation methods that are generally accepted. The valuer's task is to bring in the various facts and assumptions to the model, making appropriate insertions to the method he chooses.**

Further, bearing an impressionistic nature, valuation is more or less confined to estimations. On this front, one may encounter various technical and complex issues, however all pronouncements and rulings have been left to the wisdom of experts.

### IS THE DERIVED VALUE A CORRECT VALUE?

As mentioned above, the process of valuation being subjective, the parties debate on different views prevailing regarding applicability of specific methods, as well as on validity and correctness of the formulae used for estimation. How do we validate whether the derived value is correct or not is the challenge. During such circumstances, the questions for consideration before the courts usually revolve around the valuation methodology used and if there were any wilful mistake(s). Amidst such a dynamic and resilient environment, the Supreme Court has attempted to take steps towards admission of matters involving challenge to valuation of shares, when an important question of law has arisen. This has added perspectives to the multiple faceted regulation governing mergers and acquisitions.

Some of the decisions extracted from landmark judgements are analysed below:

- If the majority of shareholders are in acceptance of the value in a valuation report submitted by a technically qualified valuer, then ultimately the majority gets its wishes. Fairness of the value is subject to majority of shareholders approving the same<sup>4</sup>
- Valuation is a technical matter and needs to be carried out, to be valid, only by persons qualified to do so and requires considerable skill and experience<sup>5</sup>
- In relation to mergers and amalgamations, where there is matter to determine the exchange ratios
  - The courts shall not interfere if the exchange ratio is fixed by a Chartered Accountant of repute upon consideration of various factors and approved by majority of shareholders in a meeting until it comes to light whether there is any manifest unreasonableness or manifest fraud involved in the matter<sup>6</sup>

### APPRAISAL BY COURTS BEYOND THE BORDER

Valuation being an inexact science stresses on the fact that pinpoint accuracy in the result is not to be expected. The Judicial forums outside India have set the context on the grounds that when parties contract and agree to a mode of valuation, that agreement will not be disturbed unless there is a showing of bad faith or some fraud, bias or other impropriety that implicates the fundamental fairness of the valuation. General outline of various observations are listed below. Interestingly, this is in line with how courts in India have viewed the matter.

<sup>4</sup> *Bahoo J. Coyajee v. Shanta Genevieve Prommeret Parulekar; Hindustan Lever Employees Union v. Hindustan Lever Limited*

<sup>5</sup> *Hindustan Lever Employees Union v. Hindustan Lever Limited*

<sup>6</sup> *Miheer H. Mafatlal v. Mafatlal Industries Ltd;*

- The occurrence of an error or a difference in professional judgment is not enough to create a question of fact. The valuation of shares is a technical matter
- Valuation requires considerable skill and experience. There are bound to be differences of opinion among professionals as to what is the correct value of the shares of a company and they are obliged to proceed on the basis of assumptions
- In the absence of proving fraud, the mere fact that a different method might have resulted in different conclusion would not justify interference of Court.

### FACTORS INFLUENCING SECURITY VALUATION

As stated, even as stakeholders take different positions, it is also important to learn that the valuation exercise is, by its very nature, under the influence of a numerous other factors. While a professional's skill, technical know-how and experience are put to test, factors beyond these play a vital role in the end results.

#### **Demand v. Supply**

Demand and supply are fundamental to valuation. In security valuation, demand and supply are derived on the basis of numerous other factors. Most of these factors, depending on who is on which side of the table, are kept behind the wall. For a seller (supply), his value expectation would be a function of information and facts which the buyer (demand) would not be aware of. The *vice versa* also applies. Both parties, thus, engage third parties (valuers) to do a valuation. But, the valuer engaged by the seller would be made aware of the expectation of the seller, and the same applies on the other side. This creates a bias to the outcome of valuation. Hence, a valuer supporting the seller would come with a higher value for the same asset while the buyer's valuer would have an entirely opposite view.

#### **Intangibles**

The securities that are valued carry the value of underlying assets. These assets could be real assets and intangibles. Often, premiums paid to a security are attributed back to different intangible heads. This raises an important question. Was the premium arrived after considering the value of intangibles, or was it an adjustment made to justify the value. Both happens, and at times, even simultaneously.

#### **Synergies**

A prospective transaction always compels the parties to explore for options of synergies. These are the additional benefits that may accrue to either or both parties, post the transaction, apart from the direct benefits that are quite apparent. Even as valuers make valuation models justifying the straight objectives, synergies that are discovered during the process, dent a bias on certain assumptions. However, **in a transaction, synergies are often identified as an exercise and to a great extent attempts are made to quantify the same. Right from strategic aspects, synergies span across operational and financial matters. Factors such as competition, new market access, product line, technical know-how, are strategic in nature - making it even the more difficult to work around.** Operational efficiency leading to either better asset utilization, cost cutting, or resource optimization, are taken into cognizance by valuers. They are asked to make different scenarios of possible outcomes after a potential transaction. Some transactions look for financial synergies - leverage options and tax advantages. In such transactions, outcome of valuation

exercise become a matter of interest to regulators.

### Information Availability

Information plays a vital role in valuation. A valuation model often reflects the effect of all information made available, but, not what wasn't made available. And in most cases, this information asymmetry could be the prime motive of a transaction or in other words, deal maker. More often, even valuers are not kept aware of certain motives during valuation or deal making. However, the quotient of information mismatch reflects in the deal price.

#### 1. Privileged Information

Information that is kept confidential to the related party throughout the transaction process is called privileged information. These are essentially futuristic in nature - events that are bound to happen in the future. For e.g., a venture funded company planning for an IPO will be in a spree to make acquisitions. Here, the fact the company is looking for an IPO in the near future is kept behind the agenda of the transaction. The company would want to acquire Companies at a relatively lower price and strike an arbitrage while going public.

This is not so different from a real-estate valuation. For e.g. assume that a buyer of land has privileged information about

a new upcoming development - say a new highway, in a location. The buyer uses this privileged information to scout for properties in that place from sellers who are not aware of the development. The development, if it may happen, may result property values to go up by 3 times. This will be a buyer's prime motive. Buy cheap, hold, and sell high.

In a business scenario, where the asset is not as real as in the case of real-estate, but in the form of securities of a company, access to information to one party influences the deal. This overrides rationale. As in the above case, it may so happen with the seller too. A futuristic event foreseen by the management that could derail the value of the business is not brought to the table. However, it is reflected in their urgency in making a deal happen.

### TAX

Tax is another important factor that affects security valuation. One part is, as stated earlier, in terms of synergy. The second part is the tax on the transaction itself. With the Double Taxation Avoidance Agreements (DTAA) in place, Mauritius, Singapore, among other places, acted as tax havens for investors and shareholders. With about 40% short-term capital gain tax and 20% long-term capital gain tax prevailing in India, over and above applicable stamp duties, return expectations to investors is quite unclear. The heavy tax rates forced parties to find ways to siphon off money. Often, this was done by making adjustments to the valuation results, moving holding structures, etc. The government's interest in bringing a standard code for valuation is to ensure that such events do not happen, or to the extent possible, the opportunity loss is kept to the minimum. The government would not want to incur an opportunity cost by allowing a potentially high value transaction to be closed at sub-market value.

### THE VALUER: VALUING FOR SELLER OR BUYER?

The personal interest of the valuer impacts the valuation results. This depends on who the valuer is working for. Or in the other words, the valuation mandate. Interestingly, or rather strangely, in India, there are two major valuation mandates.

1. Valuation for valuation - In this, the valuer is expected to model and come up with a fair value estimation of the securities. This is under the premise that the parties involved do not have an understanding or estimate of the value. When the valuer works on this mandate, it is quite natural that the valuation results are biased in favour of the party who has given the mandate to the valuer. In some cases, the Transaction Advisor carries out the valuation. For such instances, where the Transaction Advisor's fee is linked to the Gross Transaction Value, it is quite likely that the valuer's interest would increase the valuation. However, the valuer also needs to be cautious on the limits as he gets paid only when the transaction is concluded. An artificial increase in valuation is a deal breaker.
2. Valuation for calculation - In this, the parties negotiate and conclude on a value for a transaction. A valuer is asked to build a model justifying that value. This could be merely for a regulatory requirement.

### PURPOSE OF VALUATION

The purpose of valuation also influences the net result of a valuation exercise. Valuations are normally carried out for both, transactional and non-transactional objectives. A few common instances where valuation is called for is given below:



**A valuer may have two different valuation results for the same security at the same time, given a different context or purpose for which the valuation was being carried out. For example, a voluntary valuation done for a family run business could be completely under stated by the valuer when compared to a scenario where that Company was looking to raise funds. Though the methods of valuation remain same, certain assumptions pertaining to weights, cost of capital, dilution etc. are also considered in the interest of the Client.**

**Courts shall not interfere with the valuation of an expert unless it is shown that some well accepted principles of valuation have been departed from without any reason, or the approach adopted is patently erroneous, or the relevant factors have not been considered by the valuer, or the valuation has been made on a fundamentally erroneous basis, or there is a fundamental error going to the root of the matter.**

1. Transactional
  - a. Sale of a Company
  - b. Acquiring a Company
  - c. Capital Raising
  - d. Merger/Amalgamations
  - e. Divestment / Foreclosure / Asset Reconstruction
2. Non-transactional
  - f. Regulatory (as a follow on to a transaction)
  - g. Reporting (in case of funds, wherein they are required to value their portfolios on a periodic basis)
  - h. Voluntary
  - i. Employee Stock Options

Depending on the purpose, a valuer may take certain assumptions and positions. A valuer may have two different valuation results for the same security at the same time, given a different context or purpose for which the valuation was being carried out. For example, a voluntary valuation done for a family run business could be completely under stated by the valuer when compared to a scenario where that Company was looking to raise funds. Though the methods of valuation remain same, certain assumptions pertaining to weights, cost of capital, dilution etc. are also considered in the interest of the Client.

### THE SECURITY

As discussed above, while the purpose of valuation is itself a determining factor of the exercise, the security being valued is also a factor that split opinions.

1. ESOPs: In India, options are a relatively new concept. Only until recent times did ESOPs become popular. While there is a lot of ambiguity in valuing these securities, it is also common that the valuation results may be a subject of debate among different stakeholders - mostly external investors and promoters.
- 2.
3. Sweat Equity: The concept of sweat equity is again relatively new to India. We have come across arguments for and against issue of sweat equity. From a valuer's perspective, it is hard to rationally justify the qualitative contributions of a person to the equity value of a Company. However, with legal acceptance, this route is being used by people to round-trip money and stake. In one of the high-profile controversies, an attempt to acquire stake indirectly by a renowned personality attracted public criticism.

### INTEREST OF THE GOVERNMENT

Business valuation has become an increasingly important subject

across different government bodies. All the while, the interest of the Government was to protect its revenue. But now, with the new regime of Corporate Governance, the Government is spreading its role in monitoring and governing different valuation related matters and disputes. However, the primary interest for Government continues to be in monitoring lost revenue due to manipulation of valuation results.

#### IS THE GOVERNMENT TALKING ABOUT VALUATION STANDARDS LIKE THE ACCOUNTING STANDARDS?

Is it really possible to standardize valuation? Well, that may not be possible. Given the stakes involved, the very purpose of valuation, and numerous other factors, valuation will remain as a subject of ambiguity. However, the government would like to tighten the loose ends by bringing a common platform for valuers with the recent amendments.

It is easy to understand this by drawing parlance with how Accounting Standards serve as a guideline for Companies to treat their transactions. These standards were indeed brought in as a means to bring a fair playing field for Companies, and at the same time help the regulators with more transparency on matters including but not limited to tax. The Government is trying to establish a similar standard for valuation that will at the least protect the interest of the Government and other stakeholders who are vulnerable to be duped.

But even today, Companies find it hard to categorize certain items as per the accounting standards. They maintain two accounts - one for reporting, and one for internal appraisal. This is common in valuation too. In a transaction environment, relative valuation - i.e., market comparable multiples and similar transaction multiples methods - are the most widely applied valuation approaches. However, current reporting encourages either the Net Asset Value method or the Discounted Cash Flow method for securities valuation under various statutes.

### WHAT'S AHEAD

Having discussed a number of factors and judicial observations on the matter of valuation, it is important to observe how this practice area is going to be shaped up in the next one or two years. The judicial system in India does concede to the fact that valuation is a technical and exigent area of operation. Being an all pervasive inexact science may render different conclusions in each given situation. This places an additional onus on the valuers wherein they are to be diligent and ensure that their reporting be relevant, meaningful and reliable.

The Companies (Registered Valuers and Valuation) Rules, 2017 have been notified by the Ministry during the fag end of 2017. The rules provide for registration of valuers under the Companies Act, 2013. This is seen as a step toward bringing greater transparency and accountability in the age-old procedures of valuation reporting, thereby visibly making the reporting framework friendlier and more acceptable in the global arena. An analysis of the new provisions brings to light attempts made to codify the existing practice while providing more clarity on valuation requirements. These new amendments are expected to also bring more accountability, integrity, competence, and ethics to the profession. It is expected that all these changes shall bring more rationality and justice to valuation exercise providing fair opportunity for all stakeholders involved in a transaction. CS



# Approaches to Business Valuation

*Valuation, being more of an art than a science, requires certain amount of subjectivity and practical experience to undertake interpretations of different approaches to valuation including income, market and asset based approach. The introduction of concept of Registered Valuer in the Act will now set the Indian valuation standards for standardizing the use of valuation practices in India, leading to uniform valuation practices and ensuring transparency and better governance.*



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**“Knowing what business is worth and what determines its value is prerequisite for intelligent decision making”.**  
 – Warren Buffet

In the era of economic liberalization, relying more on capital market, acquisitions and restructuring are becoming commonplace for companies, strategic alliances are gaining popularity, employees stock plans are proliferating and regulatory bodies are struggling with tariff determination. In these rigmaroles a crucial issue is how should the value of a company be appraised.

Research into valuation models and metrics in finance is surprisingly spotty with some aspects of valuation being deeply analysed and others such as how best to estimate cash flows and reconciling different versions of models, not receiving the attention that they deserve. Appropriate valuations are critical to efficient working of capital markets, organisations, government and all its stakeholders. With growing shareholder activism, importance of independent valuations is arising all over the world.

The pace of growth in business in India has been phenomenal in recent years. Participation of public in financial market and development of innovative financial products has been on the rise due to the emergence of new generation entrepreneurs. Normal corollary to economic growth is stakeholders' curiosity and interest in valuations of their respective investee institutions or potential investments or divestments. All these have led to a greater demand for valuation services as investors and shareholders are interested in up-to-date information on their assets.

Business valuation is a process and a set of procedures used to estimate the economic value of an owner's interest in a business. Valuations of businesses, business ownership interests, securities, tangible or intangible assets (hereinafter collectively referred to as business valuations) may be performed for a wide variety of purposes including the following:

- Valuation for financial transactions such as acquisitions,

mergers, leveraged buyouts, initial public offerings, employee stock ownership plans and other share based plans, partner and shareholder buy-ins or buyouts, and stock redemptions

- Valuation for Dispute Resolution and/ or litigation/pending litigation relating to matters such as marital dissolution, bankruptcy, contractual disputes, owner disputes, dissenting shareholder and minority ownership oppression cases, employment disputes and intellectual property disputes
- Valuation for Compliance-oriented engagements, for example:
  - a. Financial reporting and
  - b. Tax matters such as corporate reorganizations; income tax, Property tax, and Wealth tax compliance; purchase price allocations; and charitable contributions.
- Other purposes like valuation for planning, internal use by the owners, etc.

Business/asset valuation is critical for strategic business decisions including fund-raising, mergers and acquisitions, or may be vital just to comply with certain regulatory or accounting requirements in India under RBI, Income Tax, Companies Act 2013, SEBI laws, etc. Better corporate governance is also leading to requirement of independent business valuations.

In pure sense, business valuation refers to estimation of business value.

Valuation is just to estimate

What (Cash Flow) + When (Time Period) + How (Risk), we receive in future out of a subject property.

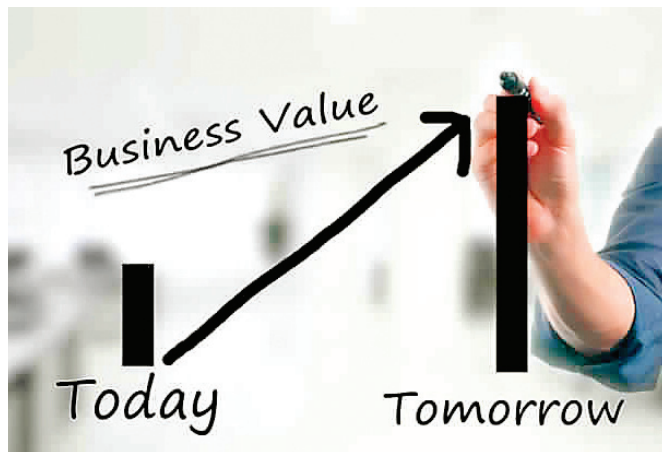
To determine the value of any business, the reasons for and circumstances surrounding the business valuation must be pre ascertained. These are formally known as the “Standard of value” and “Premise of value”. To be precise, the “Standard of Value” is the hypothetical conditions under which the business is valued and the “Premise of Value” relates to assumptions upon which the valuation is based.

## APPROACHES TO VALUATION

Choosing the right model to use in valuation is as critical to arriving at a reasonable value as understanding how to use the model. A number of business valuation models can thus be constructed that utilize various methods under the broad business valuation approaches. Most treatises and court decisions encourage the valuer to consider more than one method, which must be reconciled with each other to arrive at a value conclusion.

Broadly, any business can be valued under three valuation

Participation of public in financial market and development of innovative financial products has been on the rise due to the emergence of new generation entrepreneurs. Normal corollary to economic growth is stakeholders' curiosity and interest in valuations of their respective investee institutions or potential investments or divestments. All these have led to a greater demand for valuation services as investors and shareholders are interested in up-to-date information on their assets.



methodologies and the methodology chosen by a valuer is the one that yields higher value. The choices among approaches is driven by characteristics of business being valued - the level of earnings, growth potential, the sources of earnings growth, the stability of leverage and dividend policy. The true measure of a valuation model is how well it works

- i. In explaining differences in pricing of assets at any point in time and across time and
- ii. How quickly differences between model and market prices get resolved.

### ASSET BASED APPROACH

It determines the business value based on value of its net assets without consideration of its future earnings capacity. This approach also known as adjusted net asset approach is appropriate in the valuation of:

- i. An investment or real estate holding company since value is closely related to companies underlying assets as opposed to its earnings capacity;
- ii. An operating business that does not generate sufficient earnings to realize a reasonable return on the net tangible assets, but whose value as a going concern is higher than the liquidation value; and
- iii. An operating business where all of the income is attributable to personal goodwill ie goodwill that is not transferable to a purchaser.

The approach is a general way of determining a value indication of a business, business ownership interest, security,

or intangible asset using one or more methods based on the value of assets net of liabilities. A frequently used method under the asset approach is the adjusted net asset method. When using this method in valuing a business, business ownership interest, or security, the Valuer should consider, as appropriate, the following information:

- Identification of assets and liabilities
- Value of assets and liabilities (individually or in the aggregate)
- Liquidation costs (if applicable).

The approach should not be the sole valuation approach used in assignments relating to operating companies valued as going concerns unless this approach is customarily used by sellers and buyers. In such cases, the selection of this approach shall be supported by the Analyst.

### INCOME BASED APPROACH

Income-based valuation determines the value of a business based on its ability to generate economic benefit for the owners. The discretionary cash flows are either capitalized or discounted to derive the value. The most commonly adopted earnings/cash flow-based methods used are:

- Capitalization of maintainable net earnings
- Capitalization of maintainable after-tax discretionary net cash flow; and
- Discounting of discretionary cash flows.

Other valuation income based methods include the following:

- Capitalization of maintainable earnings before interest and income taxes (EBIT), which is similar to the capitalization of indicated net earnings; and
- Capitalization of maintainable earnings before interest, income taxes, depreciation and amortization (EBIT-DA), which is similar to the capitalization of indicated after-tax discretionary net cash flow.

The income approach explicitly recognises that the current value of an asset (liability) is premised on the expected receipt (payment) of future economic benefits (obligations) generated over its remaining life. These benefits can be in the form of earnings, net income, cash flow, or other measures of profitability and should include the proceeds from final disposition as well as cost savings and tax deductions. Value indications are developed by discounting expected benefits to their present value at the required rate of return that incorporates the time value of money and risks associated with the particular asset. The discount rate selected is generally based on expected rates of return available from alternative investments of similar type, quality, and risk as of the Transaction/Valuation Date.

The discounted cash flow ("DCF") method is a commonly used form of income approach. A DCF analysis is based upon management's projections of future revenue, operating expenses, depreciation, capital expenditures, and working capital requirements. The resulting available cash flow is then discounted at a rate consistent with the inherent level of risk in the subject company asset. Available cash flow (or free cash flow) is defined as an amount that could be distributed to investors, both debt and equity, without impairing the progress of business.

For finding the value of firm the most popular and widely used rate is Weighted Average Cost of Capital (WACC) rate which

is the blended cost of equity and debt. In order to determine a firm's cost of capital, the cost of sources of financing must be determined. Cost of equity ( $K_e$ ) and cost of debt ( $K_d$ ) should be determined on a prospective basis and be reflective of the expected risks and rates of return in future.

In order to calculate WACC, we must add the weighted  $K_e$  and the weighted after-tax  $K_d$ . This is represented by the formula below:

$$\text{WACC} = (K * W) + (K * (1-t) * W)$$

Where:

K is the cost of equity

W is the weighted equity in capital structure

K is the cost of debt

W is the weighted debt in capital structure

t is the effective corporate tax rate

### Cost of equity ( $K_e$ )

The cost of equity is the rate of return required by equity investors. This is the rate of return required by shareholders to compensate them for the risk that they undertake as equity investors.

### Cost of debt ( $K_d$ )

The cost of debt is the rate of return required by prudent lenders. Stated differently, cost of debt is the market interest rate that a firm has to pay on its borrowing.

This method is most commonly used when the company is expected to experience a period of abnormal growth or when the growth rate for near term is anticipated to be significantly different from the long-term rate of growth. This is predicated upon the ability to create a reasonable forecast of the company's income stream for the forecast period. If these conditions are satisfied, multi-period discounted future income method may more reliably capture the value impacts of cyclical or abnormal short-term factors impacting the company's results than a capitalization method.

## MARKET APPROACH (RELATIVE VALUATION APPROACH)

Market-based valuation considers public equity market data and recent transactions for similar businesses to determine multiples or other financial ratios that can then be used in conjunction with the earnings/cash flow-based or asset-based approaches to support value conclusions. This type of analysis includes:

- A comparable company analysis; and
- A comparable transaction analysis.

A comparable company analysis involves a review of public equity market (i.e., stock exchange trading prices and underlying financial data of the publicly traded comparable companies) with a view to determining implied ratios and multiples for a public company to apply to the valuation of subject private company.

A comparable transaction analysis involves a review of recent transactions of similar companies to provide indicators of rates of returns required by investors. This method is very similar to the public company multiples approach, except that instead of looking at public companies trading on a stock market, valuation multiples are developed by reviewing and analyzing companies that have recently been bought or sold in the marketplace.

The market approach is a technique used to estimate value


from an analysis of actual transactions or offerings for economically comparable assets/businesses available as of the valuation date. The process involves comparison between the subject business and similar businesses that have been recently sold or is offered for sale in the market. The transaction or offering prices of comparable businesses are adjusted for dissimilarities in characteristics including location, age, time of sale, size, and utility, among others. The adjusted prices of comparable assets provide an indication of value for the subject business.

Relative valuation methodology is the one more commonly used by valuers in upto 90% of cases (Damodaran, 2006) because of the fact that they find relative valuation as a faster and more intuitive method of valuation than a detailed absolute valuation model, which requires a lot of assumptions. While there are more discounted cashflow valuations in consulting and corporate finance, they are often relative valuations disguised as discounted cash flow valuations.

Steps to relative valuation includes:

- **Finding comparable assets:** Identify comparable assets and obtain their market values
- **Scaling the market price to a common variable:** Convert market values into standardized values since absolute prices cannot be compared. This process of standardizing creates price multiples
- **Adjusting for differences across assets:** Compare standardized value or multiple for the asset being analyzed to the standardized values for comparable asset, controlling for any differences between firms that might affect the multiple, to judge whether the asset is under or overvalued.

The most commonly used metrics which are used in financial markets for relative valuation are price to earnings (P/E), enterprise value to EBITDA (EV/EBITDA) and price to book value (P/B). Other metrics like Price to sales (P/S), or asset based valuation techniques (Enterprise value to invested capital) are used when accounting numbers are undefined/not available or for start-ups. The ideal way to calculate these multiples is on forward looking estimates of accounting numbers like EPS (earnings per share), EBITDA (earnings before interest, tax, depreciation and amortization) and book value respectively. These estimates could either be the consensus (mean/median) estimates of all the analysts tracking that particular stock or else, an informed investor could make his own estimates. The time period of estimates commonly preferred is based on "one year forward" estimates for the next fiscal year.

 Business/asset valuation is critical for strategic business decisions including fund-raising, mergers and acquisitions, or may be vital just to comply with certain regulatory or accounting requirements in India under RBI, Income Tax, Companies Act 2013, SEBI laws, etc. Better corporate governance is also leading to requirement of independent business valuations.



## RELATIVE VALUATION TECHNIQUES

Among the three main valuation ratios: P/E, EV/EBITDA and P/B, P/E ratio is the most commonly used across most industries since it shows a direct association between earnings and price and can be directly applied without any adjustments. However, earnings are most vulnerable to accounting manipulations since it is affected by both operating and financial leverage. Also focusing on only P/E multiple might make a comparable company with a higher leverage look optically cheap. As a corollary, a company with high cash in the balance sheet might have a distorted P/E ratio due to high component of other income in profits.

EV/EBITDA multiple performs better than P/E multiple when it comes to impact of accounting anomalies. Difference in finance leverage doesn't impact this ratio since it looks at firm level and at the core business only. However it suffers from other drawbacks. It doesn't include the impact of different tax rates. Also adjustment for associate and subsidiary companies becomes a bit complex. Similarly, impact of items like goodwill, other comprehensive income (OCI), hedging reserves etc., should be adjusted while calculating P/B multiple.

It should also be noted that all one-off accounting items should be adjusted before applying a particular multiple, to remove any distortions. Also differences in accounting standards should be made uniform to enable a like-to-like comparison. This might include adjusting for depreciation rates or research & development expenses so that accounting policies do not distort the multiples.

Let us look at the explanation of different valuation multiples as given below:

**1. Price-to-Earnings (P/E) Ratio:** It simply measures as to how expensive the stock is relative to its earnings implying that how much amount an investor is ready to shell out for each rupee of earnings being generated by the company. P/E ratio should ideally be measured on a forward basis since markets focus on future growth and profitability, and not trailing. One year forward multiple is mostly used, while two year forward multiple is applied when there is sufficient visibility for the next two years. In case of one year forward P/E ratio, market price per share is divided by expected earnings per share for the next fiscal year.

**1 year forward P/E ratio = Market Price per Share/Next fiscal year estimated EPS**

P/E ratio is used for all companies with positive earnings per share. However, it serves little purpose for companies having significant volatility in earnings from one year to another. For example, earnings of banking and financial services companies are highly volatile on account of treasury gains/losses and provisioning requirements on year-to-year basis. Consequently, comparison of P/E ratio becomes quite difficult across various years as well as with competing companies. Similarly in cyclical and/or highly capital intensive industries (like infrastructure companies), P/E ratio tends to lose its significance as earnings are highly volatile and even sometimes negative. So, in effect P/E ratio would be a good measure for non-cyclical industries like consumer staples, consumer discretionary, information technology among others.

P/E ratio should also be applied to the diluted EPS (which accounts for conversion of stock options, warrants, bonds and

other convertibles) and the earnings should be adjusted for transitory and non-recurring items. Differences in accounting methods should be taken care of. The impact of dilution on accounting numbers (increase in other income/decrease in interest expenses) should also be considered while calculating diluted P/E multiple, and not just only increase in shares outstanding.

**2. Price-to-Book (P/B) Ratio:** It measures as to how expensive the stock is relative to its book value (here book value refers to shareholder's equity or the difference between assets and outside liabilities on balance sheet). The ratio is measured by dividing the market price per share with book value per share (BVPS) for the concerned company. Similar to P/E ratio, P/B should also be calculated on a forward basis.

**1 year forward P/B ratio = Market Price per Share/ Next fiscal year estimated BVPS**

P/B can be applied to value companies where earnings are negative because the book value, being an accumulated balance sheet number, is generally not negative and much more stable compared to yearly earnings. For banking and financial services companies, P/B is generally a preferred multiple primarily because of volatility in earnings on account of treasury gains/losses and provisioning requirements and second being book value of assets (mainly loans) correctly resembling the fair market value.

**3. Enterprise Value-to-Earnings before interest, tax, depreciation and amortization (EV/EBITDA) Ratio:** EV/EBITDA ratio measures the enterprise value of company relative to its operating profit or EBITDA. Enterprise value of company can be measured as:

**EV = Market Value of Equity + Market Value of Preferred Equity + Market Value of Debt – Cash & Cash Equivalents**

EV/EBITDA multiple is generally used for capital intensive businesses such as telecom, infrastructure, steel etc. which have either large investments in fixed assets or are operating with high debt levels. In leveraged buyouts, where the key factor is cash generated by firm prior to all discretionary expenditures, EBITDA is the measure of cash flows from operations that can be used to support debt payment at least in the short-term.

EV/EBITDA multiples uses the core operating profitability (EBITDA) in its calculation thereby controlling for differences arising on account of depreciation methods as well as leverage (interest) levels across companies. Similar to P/B ratio, EV/EBITDA ratio can also be applied to companies where earnings are negative. Adjustment of EV/EBITDA multiples for accounting conventions (expensing vs. capitalizing R&D or operating vs. financial lease) should be considered.

**4. Price-to-Sales (P/S) Ratio:** Price-to-Sales ratio compares the market price of company relative to its annual revenue or sales per share.

**P/S ratio = Market price per share/Revenue or Sales per Share**

P/S ratio is generally used for companies or sectors where operating profitability is negative. For example, start-ups or early stage companies (like e-commerce) tend to have heavy capital outlays, low (or negative) operating profitability and accumulated losses in earlier years. Consequently, they

**No matter how codified and scientific the valuation process is, valuation will always involve judgement based on experience of valuers and would base upon assumptions and limiting conditions based on data available on a valuation date.**



cannot be valued using P/E or P/B or EV/EBITDA ratios. In such cases, P/S can be a useful metric while comparing relative valuation of various early stage companies.

### CHALLENGES IN USING RELATIVE VALUATION APPROACH

For using relative valuation to value a company, finding a peer company to use as a benchmark is the key first step. Peer company needs to have the same business risk, profitability and future growth expectations. Often firms might differ significantly in these parameters, even within the same sector (See Table 1). For example, as shown in Table 1 for the information technology sector, the range of one year forward P/E multiple is from 14.75x to 19.24x. Hence one has to be careful before directly applying a peer multiple as a benchmark since there might be a significant cross sectional variation in valuation multiples across the peer set. The difference could be due to variety of reasons like difference in growth prospects, profitability or a difference in corporate governance, even within the same sector. Using the right method of consensus (median rather than mean) and the right peer to compare to is most important. The key is to find the closest comparable company and adjust it for the differences in business fundamentals, corporate governance and management quality. Certain other aspects like ownership, whether MNC or not, could also impact valuations. MNCs typically trade higher because of better perceived corporate governance and de-listing potential, even if business fundamentals are not very different. Thus it is true that there is a high level of subjectivity when using relative valuation.

**Table 1: Relative Valuation Benchmark**

Name	Current Market Cap (INR Crore)	Current EV (INR Crore)	P/E 1 yr forward	EV/EBITDA 1 yr forward
TCS	670732.41	312285	19.24	15.79
Infosys	265261.39	161776.44	16.62	13.68

HCL Technologies	124793.85	109873.3	18.48	12.12
Wipro	119139.54	722649.4	14.75	2.28
Tech Mahindra	66178.90	50074.75	16.05	10.57

Since it is almost impossible to find an exact comparable peer, we have to adjust for differences in profitability, growth and risk in order to make multiples comparable. It can either be done in a subjective manner or using a formal method. A common multiple used for this purpose is the PEG (P/E divided by growth) multiple. However this adjustment does not account for difference in business risk. Also P/E and growth do not have a linear relationship, especially at very low and high levels of growth. Thus, one has to be careful in using PEG ratios to compare high and low growth companies.

Valuation involves use of professional judgement, knowledge of businesses, analyses of facts, interpretations and uses of different methods and procedures which may result into different value in each given situation. Its proper application requires certain amount of subjectivity and comes with practice and experience.

Varied valuation approaches have been prescribed as per internationally accepted valuation guidelines, say, a fair-value methodology, by different regulators in India. However, there exists no guidelines in most of the cases, for selection of a particular methodology and no details have been provided for on its manner of application. Professional judgement of valuer is thus critical in any valuation exercise. However, till now, due to lack of Indian Valuation Standards and absence of any regulatory authority to control, guide and develop the practice of valuation in India, different valuers have been taking different assumptions leading to drastic differences in value conclusion. In many cases, valuation also lacks uniformity and adherence to generally accepted global valuation practices.

With above background, the Companies Act 2013 had brought the concept of registered valuers to regulate the practice of valuation in India and to bring valuation in line with international standards. Herein, Section 247 of the Act mandates that valuation of any property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities shall be carried out by a person having such qualifications and experience and registered as a valuer in such manner as may be prescribed. Such valuer shall be appointed by Audit Committee or in its absence by Board of Directors of that company. The Companies (Registered Valuers and Valuation) Rules, 2017, issued by MCA, came into force w.e.f. October 18, 2017.

The rules include the following:

- i. Eligibility, Qualification, experience and registration of a valuer for each asset class and the selection process involved.
  - Any person, partnership entities (includes limited liability partnerships) are eligible to be registered valuers, provided they meet eligibility conditions prescribed in the rules
  - In case of partnership entities or companies, in order to be eligible as registered valuers (apart from other conditions), it is necessary that the entity is formed for



rendering professional or financial services including valuation and at least three or all the partners or directors (whichever is lower), are registered valuers

- To test professional knowledge, skills, values and ethics in valuation, IBBI to either on its own, or through a designated agency, conduct examinations for one or more asset classes, for individuals (who possess the qualifications and experience as specified) and have completed their educational courses as member of a registered valuers organisation
  - The Central Government may constitute a committee to be known as “committee to advise on valuation matters” to make recommendations on formulation and laying down of Indian valuation standards and policies for compliance by companies and registered valuers.
- ii. Role of registered valuers’ organisations: A company registered under section 8 of Companies Act, 2013 (or section 25 of the erstwhile Companies Act, 1956), with the sole object of dealing with matters relating to regulation of valuers of an asset class or classes and professional institutes established by an Act of Parliament enacted for the regulation of a profession are eligible to be registered as Registered Valuers Organisations, provided they meet the following key requirements:
- Conducts educational courses in valuation, in accordance with the syllabus determined by the IBBI
  - Grants memberships or certificate of practice to individuals who possess qualifications and experience as required under the Rules
  - Conducts training for individual members before a certificate of practice is issued
  - Monitors and reviews the functioning, including quality, of services, or valuers who are its members
- iii. The valuation standards which the valuer is required to be adhered to while performing and reporting;
- iv. Professional competence and due care and independence of valuer;
- v. Contents of valuation report including permissible caveats and limitations;
- vi. Regulation of professionals, concluding Model Code of Conduct for registered valuers.

Role of a valuer is to consider the facts of each case, understand purpose of valuation and applicable regulatory norms for such

transaction. Validation of inherent assumptions of a business model is critical in any business valuation engagement. Limitations and Assumptions should be properly explained in the valuation report.

The valuation area would be another wide scope for the practicing company secretaries to act as registered valuer since valuation is called for many occasions such as - further issue of shares, for valuing assets involved in arrangement of non-cash transactions involving Directors, for valuing whereas, property and assets of the company under a scheme of corporate debt, for valuing equity shares held by minority shareholders, for valuing assets for submission of report by liquidator, for report on the assets of company for preparation of declaration of solvency under voluntary winding up, for valuing the interest of any dissenting member of the transferor company who did not vote in favour of special resolution, purchasing of minority shares and many other event based instances.

The rules have opened the doors to a varied set of professionals, including member of a professional institute say CA, CS, CMA for financial assets, graduates in Civil Engineering, Architecture or town planning for land and building, mechanical/electrical engineers for plant and machinery (besides other organisations as may be prescribed). However, it is not to be ignored that it has come with a lot of responsibilities as it now stands regulated by the government.

No matter how codified and scientific the valuation process is, valuation will always involve judgement based on experience of valuers and would base upon assumptions and limiting conditions based on data available on a valuation date.

## CONCLUSION

Valuation is a craft, a mix of both art and science which require certain amount of subjectivity and practical experience. The growing significance of individual valuation in businesses and in complying with corporate compliances, establishing uniform procedures and guidelines for undertaking valuation services by valuers and other practitioners is all the more important in view of constantly changing markets and reforms in accounting practices. The concept of Registered Valuer as initiated in Companies Act 2013 will serve as prescribing standard valuation rules in India, thereby ensuring better governance. CS



# Registered Valuers and Valuation Rules, 2017

*The concept of Registered Valuers is introduced by Companies Act, 2013. Section 247 of the Companies Act, 2013 (the Act)] and the Companies (Registered Valuers and Valuation) Rules, 2017 (the Rules) came into effect from 18th October, 2017. This will ensure that the valuation reports disclose a true, fair and complete view which result in greater objectivity in valuation procedures. It will provide a new opportunity for the Company Secretaries.*



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## BACKGROUND

The Ministry of Corporate Affairs (MCA) had notified the provisions governing Valuation by Registered Valuers [Section 247 of the Companies Act, 2013 (“the Act”)] and the “Companies (Registered Valuers and Valuation) Rules, 2017” on 18<sup>th</sup> October, 2017. Section 247 of the Act requires that the valuation is to be made of any property, stocks, shares, debentures, securities or goodwill or any assets or net worth of a company or its liabilities under the provisions of the Act shall be valued by a person having the requisite qualifications, experience, registered as a valuer and member of a registered valuers organisation, in the manner prescribed in the Rules. The Registered valuers will be appointed by the Audit Committee or in its absence by the Board of Directors of that company.

Further, the rules mainly provide for Registration of Valuers for conducting the valuation exercise envisaged under the Act i.e. it provides for registration of different category of valuers with eligibility requirements relating to qualifications and experiences. The Rules also lays down the criteria for Individuals, Partnership Firms and Companies eligible to be registered as valuers under the Act. It also lays down the

mechanism to prescribe valuation standards and syllabus for conduct of educational courses on valuation. It also specifies the requirements about the contents of the valuation report and includes following other aspects with respect to registered valuers and valuation: -

- Who can be Valuers;
- Process for registration as valuers;
- Registered Valuer Organizations;
- Valuation standards;
- Transitional arrangement etc.

## DELEGATION OF AUTHORITY

The MCA vide its notification dated 23<sup>rd</sup> October, 2017 delegates the powers and functions vested on it under Section 247 of the said Act to the Insolvency and Bankruptcy Board of India (IBBI)<sup>3</sup> as the responsible authority with regard to the registration/recognition and ancillary matters thereto.

## TRANSITIONAL ARRANGEMENT

**Rule 11** of the Companies (Registered Valuers and Valuation) Rules, 2017 provides for transitional arrangement that any person, who may be rendering valuation services under the Companies Act, 2013 on the date of commencement of the Rules, may continue to render valuation services without a certificate of registration under the said Rules up to 31<sup>st</sup> March, 2018.

<sup>1</sup> MCA notification no S.O. 3393(E), [F. No. 1/27/2013-CL-V], dated 18th October, 2017. Available at: [http://www.mca.gov.in/Ministry/pdf/Commencement-Notification\\_20102017.pdf](http://www.mca.gov.in/Ministry/pdf/Commencement-Notification_20102017.pdf)

<sup>2</sup> MCA notifies the Companies (Registered Valuers and Valuation) Rules, 2017. Available at: [http://www.mca.gov.in/Ministry/pdf/RegisteredValuers\\_19102017.pdf](http://www.mca.gov.in/Ministry/pdf/RegisteredValuers_19102017.pdf)

<sup>3</sup> MCA Notification no. SO 3401(E) [F.NO.1/27/2013-CL-V (PART-I)], dated 23rd October, 2017 Available at: [http://www.mca.gov.in/Ministry/pdf/delegationOfPowers\\_Section247\\_24102017.pdf](http://www.mca.gov.in/Ministry/pdf/delegationOfPowers_Section247_24102017.pdf)

**A person who may be rendering valuation services under the Companies Act, 2013 on the date of commencement of the Rules, may continue to render valuation services without a certificate of registration under the Rules up to 30th September, 2018.**

Further, the Rules clarify that conduct of valuation by any person under any law other than the Companies Act, 2013 or the Rules shall not be effected by virtue of coming into effect of the Rules unless the relevant other laws or other regulatory bodies require valuation by such person in accordance with the Rules.

However, vide Gazette Notification dated 9<sup>th</sup> February, 2018<sup>4</sup>, the timeline of 31<sup>st</sup> March, 2018 has been extended to 30<sup>th</sup> September, 2018. In other words, a person who may be rendering valuation services under the Companies Act, 2013 on the date of commencement of the Rules, may continue to render valuation services without a certificate of registration under the Rules up to 30<sup>th</sup> September, 2018.

### WHO CAN BE VALUERS?



### VARIOUS RULES TO BECOME REGISTERED VALUERS

#### ELIGIBILITY NORMS (RULE 3)

##### Rule 3(1): Eligibility for an Individual

A person shall be eligible to be a Registered Valuer if he fulfills **ALL** the following conditions:

- is a valuer member of Registered Valuers Organisation ("RVO") who possesses the requisite educational qualifications and experience for being registered as a valuer;
- is recommended by RVO;
- has passed the valuation examination within 3 years preceding the date of making an application for registration;
- possesses qualification and experience as per rule 4;
- is a person Resident of India, not a minor and not declared to be of unsound mind;
- is not an undischarged bankrupt or has not applied to be adjudicated as a bankrupt;
- has not been convicted by any competent court for an offence punishable with imprisonment > 6 months or for an offence involving moral turpitude and a period of 5 years has not elapsed from the date of expiry of the sentence;
- has not been levied a penalty under section 271J of Income-tax Act, 1961 and time limit for filing appeal has expired, or such penalty has been confirmed by Income-tax Appellate Tribunal, and 5 years have not elapsed after levy of such penalty; and
- is fit and proper person including but not limited to integrity, reputation and character, absence of convictions and

restraints orders and competence and financial solvency.

##### Rule 3(2): Eligibility for Partnership Entity and Company

A Partnership Entity or Company shall be eligible to be a registered valuer if it satisfies **ALL** the following conditions:

- it has been set up for objects for rendering professional or financial services, including valuation services; in the case of a company, it is not a subsidiary, joint venture or associate of another company or body corporate;
- it is not undergoing an insolvency resolution or is not an undischarged bankrupt;
- all the partners / directors are eligible as per Rule 3(1) as stated above;
- three or all the partners / directors, whichever is lower are registered valuers OR at least one of its partner / director is a registered valuer for the asset class, for the valuation of which it seeks to be a registered valuer.

#### QUALIFICATION AND EXPERIENCE NORMS (RULE 4)

An individual shall have **ANY** of the following qualifications and experience to be eligible for registration:

- Post-Graduate degree or Post-Graduate Diploma in the specified discipline AND  $\geq 3$  years of experience in the specified discipline thereafter;
- Bachelor's degree or equivalent in the specified discipline AND  $\geq 5$  years of experience in the specified discipline thereafter;
- Membership of a professional institute established by an Act of Parliament AND  $\geq 3$  years' experience after such membership AND having any qualification as mentioned in above two cases;

Educational Qualification, experience and examination or training for various asset classes, is given in an indicative manner in Annexure-IV of the said rules.

#### VALUATION EXAMINATION (RULE 5)

**For testing of Professional Knowledge, Skills, Values and Ethics in Valuation:-**

- The authority shall, either on its own or through a designated agency, conduct valuation examination for one or more asset classes, for individuals, who possess the qualifications and experience and have completed their educational courses as member of RVO;
- The authority may recognize an educational course conducted by RVO before its recognition as adequate for the purpose of appearing for valuation examination;
- The authority may recognize an examination conducted as part of a master's or post graduate degree course conducted by a University which is equivalent to the valuation examination;
- The authority shall determine the syllabus for various valuation specific subjects or assets classes for the valuation examination on the recommendation of one or more Committee of experts constituted by the authority in this regard;
- The authority shall publish the syllabus, format and frequency of the valuation examination, including qualifying marks, on its website at least three months before the examination;
- An individual who passes the valuation examination, shall receive acknowledgement of passing the examination;
- An individual may appear for the valuation examination

<sup>4</sup> MCA vide Notification G.S.R.No. 155(E) issued on 9th February, 2018. Available at [http://www.mca.gov.in/Ministry/pdf/CompaniesRules2018\\_12022018.pdf](http://www.mca.gov.in/Ministry/pdf/CompaniesRules2018_12022018.pdf)

any number of times.

### APPLICATION FOR REGISTRATION AND ITS CONDITIONS (RULE 6)

- a. An eligible Individual may make an Application for Registration to IBBI in **Form-A** along with non-refundable fees of Rs. 5,000/- in favour of the authority.
- b. An eligible partnership entity or company may make an Application for Registration to IBBI in **Form- B** along with non-refundable fees of Rs. 10,000/- in favour of the authority.
- c. After due examination of Application by IBBI, it may ask applicant to submit additional documents or appear before the authority either in person or through authorized representative and may grant **21 days** to the applicant to remove the deficiencies.
- d. IBBI may grant a certificate of registration in **Form-C** within **60 days** of receipt of complete application excluding the time given by the authority for presenting additional documents, information or clarification, or appearing in person, as the case may be.
- e. If the authority is not satisfied on scrutiny, it shall communicate the reasons for not granting registration within **45 days** of receipt of complete application, excluding the time given by it for removing the deficiencies, presenting additional documents or clarifications, or appearing in person, as the case may be.
- f. The applicant shall submit explanation within **15 days** of communication of rejection of application.
- g. The authority shall communicate its decision to the applicant within **30 days** of receipt of explanation.

### CONDITIONS FOR REGISTRATION(RULE 7)

The valuer shall comply with **ALL** the following conditions for receipt of Certificate of Registration:

- a. All time possess the eligibility and qualification and experience criteria as specified above in Rule 3 and 4;
- b. All time comply with the provisions of the Act, these Rules and the Bye-Laws or internal regulations;
  - c. Shall not conduct valuation of the assets or class(es) other than those for which he has been registered by IBBI;
  - d. take prior permission of IBBI for

- e. shifting his membership from one RVO to another;
- f. take adequate steps for redressal of grievances;
- f. maintain records of assignments undertaken by him for at least 3 years after completion of such assignment;
- g. comply with Code of Conduct as per Annexure I of the rules;
- h. only that partner or director who is a registered valuer for the asset class(es) is allowed to sign and act on behalf of it;
- i. in case of partnership entity or company, it shall disclose to the company concerned, the extent of capital contributed by the partner or director, as the case may be, who would sign and act in respect of relevant valuation assignment;
- j. Partnership entity or company will also be liable along with the partner or director who signs and acts in respect of a valuation assignment;
- k. Partnership entity or company shall immediately inform IBBI on the removal of a partner or director along with detailed reasons for such removal.
- l. comply with other such conditions as may be imposed by the authority from time to time.

### CONDUCT OF VALUATION: REPORTING MECHANISM {RULE 8 (1) AND (2)}

#### ➤ Rule 8(1) & (2): Standards to be complied with:

- a. The registered valuer shall, while conducting a valuation, comply with the notified or modified valuation standards.

Provided that until the valuation standards are notified or modified by the Central Government, a valuer shall make valuations as per:

- (a) internationally accepted valuation standards;
- (b) valuation standards adopted by any registered valuers organisation.
- b. The registered valuer may obtain inputs for his valuation report or get a separate valuation for an asset class conducted from another registered valuer, in which case he shall fully disclose the details of the inputs and the particulars etc. of the other registered valuer in his report and the liabilities against the resultant valuation, shall remain of the first mentioned registered valuer.





Following entities may also be registered as RVO if that entity converts into or register itself as a company under section 8 of the Companies Act, 2013 and include in its bye laws the specified requirements, within one year from the date of commencement of these rules • an organisation registered as a society under the Societies Registration Act, 1860 or any relevant state law • a trust governed by the Indian Trusts Act, 1882.

➤ **Rule 8(3): Contents of Valuation Report : The valuer shall, in his report, state the following: -**

- (a) background information of the asset being valued;
- (b) purpose of valuation and appointing authority;
- (c) identity of the valuer and any other experts involved in the valuation;
- (d) disclosure of valuer interest or conflict, if any;
- (e) date of appointment, valuation date and date of report;
- (f) inspections and/or investigations undertaken;
- (g) nature and sources of the information used or relied upon;
- (h) procedures adopted in carrying out the valuation and valuation standards followed;
- (i) restrictions on use of the report, if any;
- (j) major factors that were considered during the valuation;
- (k) conclusion; and
- (l) caveats, limitations and disclaimers to the extent they explain or elucidate the limitations faced by valuer, which shall not be for the purpose of limiting his responsibility for the valuation report.

### CANCELLATION OR SUSPENSION (RULE 9)

- a. A registered valuer may temporarily surrender his registration certificate in accordance with the bye-laws or regulations of the RVO and shall inform IBBI for taking such information on record;
- b. RVO shall within 7 days from approval of the application for temporary surrender or revival, inform IBBI, where any valuer member has temporarily surrendered his/its membership or revived his/ its membership after temporary surrender;
- c. Every RVO shall place, on its website, in a searchable format, the names and other details of its valuer members who have surrendered or revived their memberships.

### FUNCTIONS OF VALUER (RULE 10)

A valuer shall conduct valuation required under the Act as per these rules. In addition, he may conduct valuation as per these rules if required under any other law or by any other regulatory authority.

### ELIGIBILITY FOR REGISTERED VALUERS ORGANISATION (RULE 12)

**Rule 12(1) and (3): Types of Organizations: -** Following types of Organizations can be registered as RVO:

- a. Organisation registered under section 8 of the Companies Act, 2013 or any previous Act with the sole object of dealing with matters relating to regulation of valuers of an

- asset class or asset classes and has in its bye laws the requirements specified in Annexure-III;
- b. a professional institute established by an Act of Parliament, for the purpose of regulation of profession.

Following entities may also be registered as RVO if that entity converts into or register itself as a company under section 8 of the Companies Act, 2013 and include in its bye laws the specified requirements, within one year from the date of commencement of these rules.

- (i) an organisation registered as a society under the Societies Registration Act, 1860 or any relevant state law;
- (ii) a trust governed by the Indian Trusts Act, 1882;

### APPLICATION FOR RECOGNITION(RULE 13)

- a. An eligible organisation may make an application for recognition to the authority in Form-D with non-refundable fees of Rs. 1,00,000/- in favour of the authority.
- b. After due examination of Application by IBBI, it may ask applicant to submit additional documents or appear before the authority either in person or through authorised representative and may grant 21 days to the applicant to remove the deficiencies.
- c. If the authority is satisfied on scrutiny, it may grant a certificate of recognition in **Form-E**.
- d. If the authority is not satisfied on scrutiny, it shall communicate the reasons for not granting recognition within 45 days of receipt of complete application.
- e. The applicant shall submit explanation within 15 days of communication of rejection of application.
- f. The authority shall communicate its decision to the applicant within 30 days of receipt of explanation.

### CONDITIONS FOR RECOGNITION (RULE 14)

The recognition shall be subject to **ALL** the following conditions:

- a. at all times continue to satisfy the eligibility requirements specified under rule 12;
- b. maintain a register of members who are registered valuers, which shall be publicly available;
- c. admits only individuals who possess the educational qualifications and experience requirements, in accordance with rule 4 and as specified in its recognition certificate, as members;
- d. make such reports to IBBI as may be required by it;
- e. comply with any directions, including with regard to course to be conducted by valuation organisation under clause (a) of sub-rule (2) of rule 12, issued by the authority;
- f. shall be converted or registered as company under section 8 of the Act, with governance structure and bye laws, within a period of one year from the date of commencement of these rules if it is an organisation referred to in proviso to sub-rule (1) of rule 12;
- g. shall have the governance structure and incorporate in its bye laws requirements within one year of commencement of these rules if it is an organisation referred to in clause (i) of sub-rule (1) of rule 12 and existing on the date of commencement of these rules;
- h. display on its website, the status and specified details of every registered valuer being its valuer members including action under rule 17 being taken against him; and
- i. comply with such other conditions as may be specified by the authority from time to time.

## CANCELLATION OR SUSPENSION OF CERTIFICATE OF REGISTRATION OR RECOGNITION: PROCEDURAL REQUIREMENTS (RULES 15 AND 17)

The authority may cancel or suspend the registration of a valuer or recognition of a registered valuers organisation for violation of the provisions of the Act, any other law allowing him to perform valuation, these rules or any condition of registration or recognition, as the case may be in the manner as specified below:-

### A. ISSUE OF SHOW CAUSE NOTICE

Based on the findings of an inspection or investigation, or a complaint received or on material otherwise available on record, if the authorised officer is of the *prima facie* opinion that sufficient cause exists to cancel or suspend the registration of a valuer or cancel or suspend the recognition of RVO, it shall issue a show-cause notice to the valuer or RVO.

#### (i) MANNER OF SERVING SHOW CAUSE NOTICE

- (a) sending it to the valuer or RVO at its registered address by registered post with acknowledgment due; OR
- (b) an appropriate electronic means to the email address provided by the valuer or registered valuers organisation to the authority.

#### (ii) DISPOSAL OF SHOW CAUSE NOTICE

The notice shall be disposed off in adherence to the principles of natural justice which may provide no action or warning or suspension or cancellation or change in any one or more partner or director.

#### (iii) ORDER

The order issued to the concerned person and published on the website of the authority and shall not become effective until 30 days have elapsed from the date of issue.


## COMPLAINT AGAINST REGISTERED VALUER OR RVO (RULE 16)

A complaint may be filed against a registered valuer or RVO before IBBI in person or by post or courier along with non-refundable fees of Rs. 1000/- in favour of authority (IBBI) and it shall examine the complaint and take such necessary action as it deems fit.

Provided that in case of a Complaint against a registered valuer, who is a partner of a partnership entity or director of a company, IBBI may refer the complaint to the relevant RVO and such organisation shall handle the complaint in accordance with its bye laws.

## COMMITTEE TO ADVISE ON VALUATION MATTERS (RULE 19)

The Central Government may constitute a Committee to be

 Where a person contravenes any of the provisions of these rules, he shall be punishable with fine which may extend to Rs. 5000/- and where the contravention is a continuing one, with a further fine which may extend to Rs. 500/- for every day after the first during which such contravention continues as provided under sub-section (3) of section 469 of the Act.

known as “Committee to advise on valuation matters” to make recommendations on formulation and laying down of valuation standards and policies for compliance by companies and registered valuers.

The Committee shall comprise of: -

- (a) a Chairperson who shall be a person of eminence and well versed in valuation, accountancy, finance, business administration, business law, corporate law, economics;
- (b) one member nominated by the Ministry of Corporate Affairs;
- (c) one member nominated by the Insolvency and Bankruptcy Board of India;
- (d) one member nominated by the Legislative Department;
- (e) up to four members nominated by Central Government representing authorities which are allowing valuations by registered valuers;
- (f) up to four members who are representatives of registered valuers organisations, nominated by Central Government;
- (g) up to two members to represent industry and other stakeholder nominated by the Central Government in consultation with the authority.

The Chairperson and Members of the Committee shall have a tenure of 3 years and they shall not have more than 2 tenures.

## PENAL PROVISIONS (RULES 20 AND 21)

### (a) Rule 20: Contravention

Where a person contravenes any of the provisions of these rules, he shall be punishable with fine which may extend to Rs. 5000/- and where the contravention is a continuing one, with a further fine which may extend to Rs. 500/- for every day after the first during which such contravention continues as provided under sub-section (3) of section 469 of the Act.


### (b) Rule 21: False Statement

If in any report, certificate or other document required by, or for, the purposes of any of the provisions of the Act or the rules made thereunder or these rules, any person makes a statement, —

- (a) which is false in any material, knowing it to be false; or
- (b) which omits any material fact, knowing it to be material he shall be liable under section 448 of the Act.

There are Four Annexures prescribed under the Companies (Registered Valuers and Valuation) Rules 2017 which are as under:

Sr. No.	Annexure	Details
1.	Annexure I	Model Code of Conduct for Registered Valuers
2.	Annexure II	Application for registration as a valuer
3.	Annexure III	Governance structure and Model Bye Laws for registered valuers organisation
4.	Annexure IV	Indicative Matrix or requisite qualification/ experience in specified discipline

Hence, it is concluded that due to implementation of Valuation Rules, there will be standardization in the valuation with reference to class of the asset in India. It will further ensure that the valuation reports disclose a true and fair view which will result in greater objectivity in valuation procedures and standards. The increased uniformity and transparency in the valuation system would also boost up stakeholder’s confidence. The ICSI has incorporated Section 8 company in the name of “**ICSI Registered Valuers Organisation**” to enroll and educate its members to become Registered valuers. 

# Valuation of Financial Assets

Valuation is a process of determining the fair market value of a company in the notional context, meaning that the valuation is a) time specific, b) there is no negotiation, and c) there is no exposure to the open market. Valuations are highly subjective calculations that aim to determine the fair market value of a company.



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## INTRODUCTION

Valuation is the process of determining the current worth of an asset or a company; there are many techniques used to determine value. An analyst placing a value on a company looks at the company's management, the composition of its capital structure, the prospect of future earnings and market value of assets.

The market value of a security is determined by what a buyer is willing to pay a seller, assuming both parties enter the transaction willingly. When a security trades on an exchange, buyers and sellers determine the market value of a stock or bond. The concept of intrinsic value, however, refers to the perceived value of a security based on future earnings or some other company attribute unrelated to the market price of a security.

## WHAT IS VALUATION

In finance, **valuation** is the process of determining the present value (PV) of an asset. Valuations can be done on assets (for example, investments in marketable securities such as stocks, options, business enterprises, or intangible assets such as patents and trademarks) or on liabilities (e.g., bonds issued by a company). Valuations are needed for many reasons such as for investment analysis, capital budgeting, merger and acquisition transactions, financial reporting, taxable events to determine the proper tax liability, and in litigation.

## VALUATION OVERVIEW

Valuation of financial assets is done generally using one or more of the following types of models:

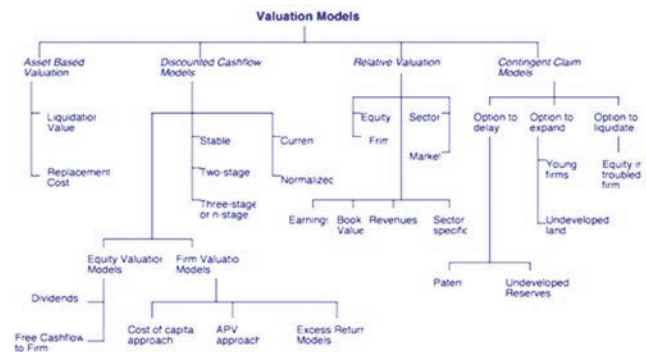
- Absolute value models** ("Intrinsic valuation") that determine the present value of an asset's expected future cash flows. These kinds of models take two general forms: multi-period models such as discounted cash flow models, or single-period models such as the Gordon model (which, in fact, often «telescope» the former). These models rely on mathematics rather than price observation.
- Relative value** models determine value based on the observation of market prices of «comparable» assets, relative to a common variable like earnings, cashflows,

book value or sales. This result, will often be used to complement/assess the intrinsic valuation.

- Option pricing models**, in this context, are used to value specific balance-sheet items, or the asset itself, when these have option-like characteristics. Examples of the first type are warrants, employee stock options, and investments with embedded options such as callable bonds; the second type are usually real options. The most common option pricing models employed here are the Black-Scholes-Merton models and lattice models. This approach is sometimes referred to as contingent claim valuation, in that the value will be contingent on some other asset.

Common terms for the value of an asset or liability are market value, fair value, and intrinsic value. The meanings of these terms differ. For instance, when an analyst believes a stock's intrinsic value is greater (less) than its market price, an analyst makes a «buy» («sell») recommendation. Moreover, an asset's intrinsic value may be subject to personal opinion and vary among analysts.

The International Valuation Standards include definitions for common bases of value and generally accepted practice procedures for valuing assets of all types.



## VALUATION PROCESS

Business valuation is a process that follows a number of key steps starting with the definition of the task at hand and leading to the business value conclusion. The five steps are:

1. Planning and preparation
2. Adjusting the financial statements
3. Choosing the business valuation methods
4. Applying the selected valuation methods
5. Reaching the business value conclusion

## VALUATION REPORT AND DOCUMENTATION

Valuation Report exercise is based on the observation,



inspection, analysis, and calculation. During this process, the valuer goes through various documents, records his observation, makes relevant calculation and records these calculation and analyses results. In this process, many documents are generated which forms the basis of his conclusion on the valuation of the subject matter. It is very necessary for him to preserve all such records so that these documents may help him to substantiate his conclusion on valuation. Moreover, all these documents also become the matter of reference in near future.

### OBJECTIVES OF DOCUMENTATION IN VALUATION EXERCISE

Documentation is “an essential element” of valuation quality. Valuation documentation provides the principal written record to support the following:

- The Valuer’s report assertion that the valuation exercise was performed with due diligence and in accordance with generally accepted valuation principles; and
- The Valuer’s conclusions about valuation of a subject matter of the valuation exercise & other related aspects of valuation.

Valuation documentation must undoubtedly demonstrate that valuation exercise was in fact performed in the compliance with generally accepted valuation principles and applicable standards. It must also provide the clear link to valuation conclusions & also must contain sufficient information, in sufficient detail, for the clear understanding of following:

#### ➤ The Nature, Timing, and Extent of the valuation exercise

- The work performed
- The purpose of the valuation
- The source of an information analyzed & supporting evidential matter obtained, examined, & evaluated; and
- The conclusions reached.

The following are the more specific purposes of documentation in valuation exercise:

- Assisting valuer to plan and perform the valuation exercise
- Assisting those responsible to direct, supervise, and review the work performed
- Providing and demonstrating the accountability of those performing the work (i.e., compliance with applicable standards)
- Assisting quality-control reviewers to understand and assess how the engagement team reached and supported significant conclusions
- Enabling internal and external inspection teams and peer reviewers to assess compliance with professional, legal, and regulatory standards and requirements; and
- Assisting successor valuer. Inadequate documentation makes it difficult or impossible to determine if the valuation exercise was actually done.

#### ➤ List of Documents

During a course of Valuation exercise, the valuation expert collects and prepares numerous documents. The documents so obtained or so prepared may differ from one assignment to another but an indicative list



Valuation Report exercise is based on the observation, inspection, analysis, and calculation. During this process, the valuer goes through various documents, records his observation, makes relevant calculation and records these calculation and analyses results. In this process, many documents are generated which forms the basis of his conclusion on the valuation of the subject matter.



of all the documents to be maintained is given below. List of Documents pertaining to the Basic information of client entity i.e. Details about Company Promoters, Key Management professional of the Company, Memorandum of Association, Article of Association, Prospectus, prior three years financial statements. A Copy of the valuation engagement with Clients should be:

- A Copy of the previous valuation report of a subject matter of valuation exercise, if any
- Required Documents which are pertaining to such assumptions & limiting the conditions in valuation assignment
- Information gathered & analyzed to obtain the understanding of matters that may affect the value of the subject interest
- Documents pertaining to the selection of a Valuation approach used in valuation assignment containing the rationale & support for their own use
- Any restriction or limitation on scope of a Valuer’s work or the data available for the analysis
- The Basis for using the valuation assumption during the valuation engagement
- the Documents pertaining to any rule of the thumb used in valuation, source(s) of the data used, as well as how the rule of thumb was applied.

Any Other documentation measured relevant to engagement by a valuer.

### WHAT IS THE PURPOSE OF A VALUATION REPORT

A valuation report differs significantly from the survey & advises on a value of the property rather than a condition.

The evaluation will normally be on the basis of present-day value although the retrospective date of valuation can also be used, particularly if this is appropriate for the taxation or the separation purposes.

## WHAT SHOULD BE THE CONTENTS OF THE VALUATION REPORT FOR CORPORATE STRATEGIES

An expert group of Ministry of Corporate Affairs suggests the following coverage in case of the Valuation Report for Corporate Strategies.

### ➤ Contents of Summarized Valuation Report

Considering the shareholders interest plus the need for the transparency & upholding corporate governance principles as well as after taking into consideration aspects of minority interest, transparency & corporate governance the Expert Group recommends that the following matters should compulsorily be covered in summarized Valuation Report, in a straight, unambiguous & non-misleading manner, consistent with a need to maintain confidentiality.


- Background Information
- Purpose of Valuation & Appointing Authority
- Identity of a valuer & any other experts involved in a valuation
- Disclosure of valuer's Interest or Conflict, if any
- Date of such an Appointment, the Valuation Date as well as the Date of Report
- The Sources of the Information
- The Procedures to be adopted in carrying out the Valuation
- The Valuation Methodology
- Major Factors influencing a Valuation.

### ➤ Details Covered in Valuation Report

- Brief particulars of company or business which is the valuation subject
- Proposed Transaction
- Key historical financials
- Capital structure of the company, if relevant, and any changes as a result of the proposed transaction
- Shareholding pattern, any significant changes (Promoters/FIs), and any changes as a result of the transaction (Note – a table of before and after shareholding patterns ought to be disclosed)
- High/low/average market volumes/price for last six months, where applicable
- A Related party issue with respect to such transaction.

## PROCEDURES ADOPTED IN CARRYING OUT THE VALUATION

The Procedures adopted in carrying out the valuation may differ with the circumstances, nature & purpose of the valuation as well as information and time available.

 A valuation report differs significantly from the survey & advises on a value of the property rather than a condition. The evaluation will normally be on the basis of present-day value although the retrospective date of valuation can also be used, particularly if this is appropriate for the taxation or the separation purposes.

The main procedures actually adopted by valuer in carrying out such valuation should be set out briefly in a report.

### ➤ Such procedures may typically include:

- Review of Past Financials
- Review and Analysis of Financial Projections
- Industry Analysis
- SWOT Analysis
- Comparison with similar transactions
- Comparison with other similar listed companies
- Discussions with Management
- Review of principal agreements/documents etc.

### ➤ A valuer should also include in his report:

- An affirmative statement that information provided & assumptions used by the Management or Others in developing projections have been appropriately reviewed, inquiries made regarding basis of key assumptions in context of analysis of the business being valued & the industry/economy; and
- An affirmative statement on the adequacy of information and time for carrying out the valuations; with such modifications as may be appropriate and warranted.

The affirmative statement shall not negate a professional liability for expertise applied in determining the value and if the degree of inadequacy of the information is severe, fundamental questions and information as assessed by the valuer as key for the appropriate stage of valuation needs to be disclosed.

## VALUATION APPROACH AND METHODOLOGY

A valuation approach is the methodology used to determine the fair market value of a business.

The most common valuation approaches are:

- **The Income Approach** - quantifies the net present value of future benefits associated with ownership of the equity interest or asset. The estimated future benefits that accrue to the owner are discounted or capitalized at a rate appropriate for the risks associated with those future benefits. Common methods within the income approach include the capitalization of earnings (or cash flow) methodology and the discounted cash flow methodology.
- **The Market Approach** - determines fair market value by reviewing actual transactions of comparable companies and assets. Both M&A activity and stock market activity are considered in deriving various value measures to apply to the subject entity.
- **The Asset-based Approach** - uses the current value of a company's tangible net assets as the key determinant of fair market value. This approach is typically used where a business is not a going concern, or where a business is a going concern but its value is tied directly to the liquidation value of its underlying tangible assets and investments. The asset-based approach also provides a useful reasonableness check while reviewing the value conclusions derived under the income or market approaches.

## USAGE

In finance, valuation analysis is required for many reasons including tax assessment, wills and estates, divorce settlements, business analysis, and basic bookkeeping and accounting. Since the value of things fluctuates over time, valuations are as of a specific date like the end of the accounting quarter



or year. They may alternatively be mark-to-market estimates of the current value of assets or liabilities as of this minute or this day for the purposes of managing portfolios and associated financial risk (for example, within large financial firms including investment banks and stockbrokers).

Some balance sheet items are much easier to value than others. Publicly traded stocks and bonds have prices that are quoted frequently and readily available. Other assets are harder to value. For instance, private firms that have no frequently quoted price. Additionally, financial instruments that have prices that are partly dependent on theoretical models of one kind or the other are difficult to value. For example, options are generally valued using the Black–Scholes model while the liabilities of life assurance firms are valued using the theory of present value. Intangible business assets, like goodwill and intellectual property, are open to a wide range of value interpretations.

It is possible and conventional for financial professionals to make their own estimates of the valuations of assets or liabilities that they are interested in. Their calculations are of various kinds including analysis of companies that focus on price-to-book, price-to-earnings, price-to-cash-flow and present value calculations, and analysis of bonds that focus on credit ratings, assessments of default risk, risk premia, and levels of real interest rates. All these approaches may be thought of as creating estimates of value that compete for credibility with the prevailing share or bond prices, where applicable, and may or may not result in buying or selling by market participants. Where the valuation is for the purpose of a merger or acquisition the respective businesses make available further detailed financial information, usually on the completion of a non-disclosure agreement.

It is important to note that valuation requires judgment and assumptions:

- There are different circumstances and purposes to value an asset (e.g., distressed firm, tax purposes, mergers and acquisitions, financial reporting). Such differences can lead to different valuation methods or different interpretations of the method results
- All valuation models and methods have limitations (e.g., degree of complexity, relevance of observations, mathematical form)

Valuation models can be used to value intangible assets such as for patent valuation, but also in copyrights, software, trade secrets, and customer relationships. Since few sales of benchmark intangible assets can ever be observed, one often values these sorts of assets using either a present value model or estimating the costs to recreate it. Regardless of the method, the process is often time-consuming and costly.

- Model inputs can vary significantly because of necessary judgment and differing assumptions.

Users of valuations benefit when key information, assumptions, and limitations are disclosed to them. They then can weigh the degree of reliability of the result and make their decision.

## BUSINESS VALUATION ENGAGEMENTS

When it comes to valuing a business, every situation is unique. There are several reasons one might need an appraisal of a business. Dependent upon the reason for the valuation and the client's needs, a valuation expert may consider either a **valuation engagement** or a **calculation engagement** to determine the value of a business.

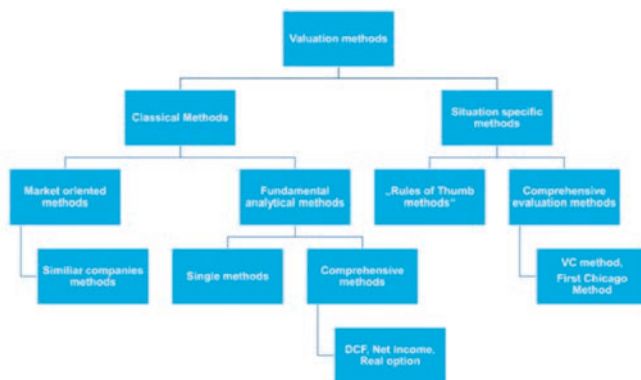
A **valuation engagement (conclusion of value)** typically requires more research, investigation and analysis than a calculation engagement and results in the valuation expert's opinion of value. To arrive at a conclusion of value, the valuation expert is required to consider all three valuation methodologies (asset-based, income-based, and market-based), as well as perform a detailed fundamental analysis of the company, the historical financial statements, the industry in which they operate, and more.

## BUSINESS VALUATION

Businesses or fractional interests in businesses may be valued for various purposes such as mergers and acquisitions, sale of securities, and taxable events. An accurate valuation of privately owned companies largely depends on the reliability of the firm's historic financial information. Public company financial statements are audited by Certified Public



Accountants (USA), Chartered Certified Accountants (ACCA) or Chartered Accountants (UK and Canada) and overseen by a government regulator. Alternatively, private firms do not have government oversight—unless operating in a regulated industry—and are usually not required to have their financial statements audited. Moreover, managers of private firms often prepare their financial statements to minimize profits and, therefore, taxes. Alternatively, managers of public firms tend to want higher profits to increase their stock price. Therefore, a firm's historic financial information may not be accurate and can lead to over- and undervaluation. In an acquisition, a buyer often performs due diligence to verify the seller's information. Financial statements prepared in accordance with generally accepted accounting principles (GAAP) show many assets based on their historic costs rather than at their current market values. For instance, a firm's balance sheet will usually show the value of land it owns at what the firm paid for it rather than at its current market value. But under GAAP requirements, a firm must show the fair values (which usually approximates market value) of some types of assets such as financial instruments that are held for sale rather than at their original cost. When a firm is required to show some of its assets at fair value, some call this process "mark-to-market". But reporting asset values on financial statements at fair values gives managers ample opportunity to slant asset values upward to artificially increase profits and their stock prices. Managers may be motivated to alter earnings upward so they can earn bonuses. Despite the risk of manager bias, equity investors and creditors prefer to know the market values of a firm's assets—rather than their historical costs—because current values give them better information to make decisions.



There are commonly three pillars to valuing business entities: comparable company analysis, discounted cash flow analysis, and precedent transaction analysis.

### ➤ **DISCOUNTED CASH FLOW METHOD**

This method estimates the value of an asset based on its expected future cash flows, which are discounted to the present (i.e., the present value). This concept of discounting future money is commonly known as the time value of money. For instance, an asset that matures and pays \$1 in one year is worth less than \$1 today. The size of the discount is based on an opportunity cost of capital and it is expressed as a percentage or discount rate.

In finance theory, the amount of the opportunity cost is based on a relation between the risk and return of some sort of

investment. Classic economic theory maintains that people are rational and averse to risk. They, therefore, need an incentive to accept risk. The incentive in finance comes in the form of higher expected returns after buying a risky asset. In other words, the more risky the investment, the more return investors want from that investment. Using the same example as above, assume the first investment opportunity is a government bond that will pay interest of 5% per year and the principal and interest payments are guaranteed by the government. Alternatively, the second investment opportunity is a bond issued by small company and that bond also pays annual interest of 5%. If given a choice between the two bonds, virtually all investors would buy the government bond rather than the small-firm bond because the first is less risky while paying the same interest rate as the riskier second bond. In this case, an investor has no incentive to buy the riskier second bond. Furthermore, in order to attract capital from investors, the small firm issuing the second bond must pay an interest rate higher than 5% that the government bond pays. Otherwise, no investor is likely to buy that bond and, therefore, the firm will be unable to raise capital. But by offering to pay an interest rate more than 5% the firm gives investors an incentive to buy a riskier bond.

For a valuation using the discounted cash flow method, one first estimates the future cash flows from the investment and then estimates a reasonable discount rate after considering the riskiness of those cash flows and interest rates in the capital markets. Next, one makes a calculation to compute the present value of the future cash flows.


### ➤ **GUIDELINE COMPANIES METHOD**

This method determines the value of a firm by observing the prices of similar companies (called "guideline companies") that are sold in the market. Those sales could be shares of stock or sales of entire firms. The observed prices serve as valuation benchmarks. From the prices, one calculates price multiples such as the price-to-earnings or price-to-book ratios—one or more of which used to value the firm. For example, the average price-to-earnings multiple of the guideline companies is applied to the subject firm's earnings to estimate its value.

Many price multiples can be calculated. Most are based on a financial statement element such as a firm's earnings (price-to-earnings) or book value (price-to-book value) but multiples can be based on other factors such as price-per-subscriber.

### ➤ **NET ASSET VALUE METHOD**

The third-most common method of estimating the value of a company looks to the assets and liabilities of the business. At a minimum, a solvent company could shut down operations, sell off the assets, and pay the creditors. Any cash that would remain establishes a floor value for the company. This method is known as the net asset value or cost method. In general the discounted cash flows of a well-performing company exceed this floor value. Some companies, however, are worth more "dead than alive", like weakly performing companies that own many tangible assets. This method can also be used to value heterogeneous portfolios of investments, as well as nonprofits, for which discounted cash flow analysis is not relevant. The valuation premise normally used is that of an orderly liquidation of the assets, although some valuation scenarios (e.g., purchase price allocation) imply an "in-use"

 The CIMVal Standards (“Canadian Institute of Mining, Metallurgy and Petroleum on Valuation of Mineral Properties”) are a recognised standard for valuation of mining projects and is also recognised by the Toronto Stock Exchange. The standards stress the use of the cost approach, market approach, and the income approach, depending on the stage of development of the mining property or project.

valuation such as depreciated replacement cost new.

An alternative approach to the net asset value method is the excess earnings method. The excess earnings method has the appraiser identify the value of tangible assets, estimate an appropriate return on those tangible assets, and subtract that return from the total return for the business, leaving the “excess” return, which is presumed to come from the intangible assets. An appropriate capitalization rate is applied to the excess return, resulting in the value of those intangible assets. That value is added to the value of the tangible assets and any non-operating assets, and the total is the value estimate for the business as a whole.

## SPECIALISED CASES

### ➤ **Valuation of a Suffering Company**

Additional adjustments to a valuation approach, whether it is market-, income-, or asset-based, may be necessary in some instances like:

- Excess or restricted cash
- Other non-operating assets and liabilities
- Lack of marketability discount of shares
- Control premium or lack of control discount
- Above- or below-market leases
- Excess salaries in the case of private companies

There are other adjustments to the financial statements that have to be made when valuing a distressed company. Andrew Miller identifies typical adjustments used to recast the financial statements that include:

- Working capital adjustment
- Deferred capital expenditures
- Cost of goods sold adjustment
- Non-recurring professional fees and costs
- Certain non-operating income/expense items

### ➤ **Valuation Of A Startup Company**

Startup companies such as Uber, which was valued at \$50 billion in early 2015, are assigned post-money valuations based on the price at which their most recent investor put money into the company. The price reflects what investors, for the most part venture capital firms, are willing to pay for a share of the firm. They are not listed on any stock market, nor is the valuation based on their assets or profits, but on their potential for success, growth, and eventually, possible profits. Many startup companies use internal growth factors to show their potential growth which may attribute to their valuation. The professional investors who fund startups are experts, but

hardly infallible, see Dot-com bubble.

### ➤ **Valuation of intangible assets**

Valuation models can be used to value intangible assets such as for patent valuation, but also in copyrights, software, trade secrets, and customer relationships. Since few sales of benchmark intangible assets can ever be observed, one often values these sorts of assets using either a present value model or estimating the costs to recreate it. Regardless of the method, the process is often time-consuming and costly.

Valuations of intangible assets are often necessary for financial reporting and intellectual property transactions.


Stock markets give indirectly an estimate of a corporation’s intangible asset value. It can be reckoned as the difference between its market capitalisation and its book value (by including only hard assets in it).

### ➤ **Valuation of mining projects**

In mining, valuation is the process of determining the value or worth of a mining property. Mining valuations are sometimes required for IPOs, fairness opinions, litigation, mergers and acquisitions, and shareholder-related matters. In valuation of a mining project or mining property, fair market value is the standard of value to be used.

The CIMVal Standards (“Canadian Institute of Mining, Metallurgy and Petroleum on Valuation of Mineral Properties”) are a recognised standard for valuation of mining projects and is also recognised by the Toronto Stock Exchange. The standards stress the use of the cost approach, market approach, and the income approach, depending on the stage of development of the mining property or project.

## CONCLUSION

The analyst faced with the task of valuing a firm/asset or its equity has to choose among three different approaches -- discounted cashflow valuation, relative valuation and option pricing models; and within each approach, they must also choose among different models. These choices will be driven largely by the characteristics of the firm/asset being valued - the level of its earnings, its growth potential, the sources of earnings growth, the stability of its leverage and its dividend policy. Matching the valuation model to the asset or firm being valued is as important a part of valuation as understanding the models and having the right inputs. Once you decide to go with one or another of these approaches, you have further choices to make – whether to use equity or firm valuation in the context of discounted cashflow valuation, which multiple you should use to value firms or equity and what type of option is embedded in a firm. 

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# Secretarial Standard on Dividend

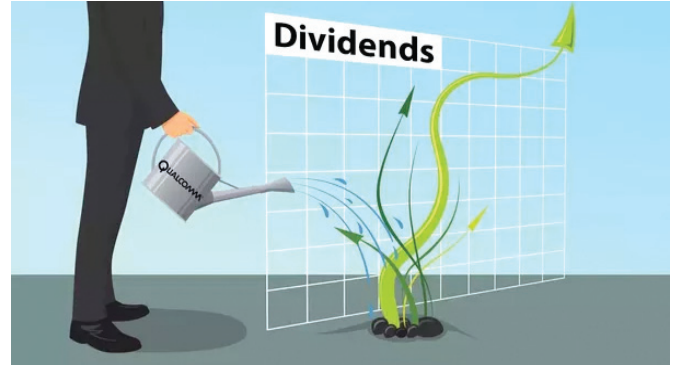
*The Companies Act, 2013 and the Rules made thereunder contain extant provisions pertaining to Declaration and payment of dividend. The Article highlights the different provisions relating to dividend in some foreign countries and also dwells upon certain situations with relevant case laws pertaining to declaration of final dividend before and after AGM and situations and manner in which dividend can be waived. Secretarial Standard on Dividend provides an adequate guidance to corporates and professionals for ensuring compliance of the provisions of the Companies Act, 2013 and the Rules made thereunder.*



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## INTRODUCTION

Secretarial Standards play the role of assisting/supplementing (and not supplanting) the extant company law provisions. Wherever there are issues in implementing the Companies Act, for example where there is no appropriate solution in Companies Act & Rules, the Standard provides an adequate guidance to the corporates and professionals for ensuring compliance of the provisions of the Companies Act, 2013 and the Rules made thereunder.

Section 118(10) of the Companies Act, 2013 requires all Companies to adhere to Secretarial Standards on Meetings of the Board of Directors (SS-1) and General Meetings (SS-2).

The Institute of Company Secretaries of India also has a Secretarial Standard on Dividend (SS-3) to facilitate India Inc. to comply with the provisions relating to declaration and payment of dividend. Dividend in normal parlance refers to returns paid out by companies to shareholders out of its profits for the current year or profits of previous years and after providing for depreciation and set off of carried losses/depreciation. It would be pertinent to note that in western countries dividends are paid out once in every quarter unlike India, where the same are declared once a year at Annual General Meetings in most cases and by the Board in the case of Interim/Special dividends in some cases.

## DIVIDEND DISTRIBUTION POLICY

The quantum of dividend payment depends on many factors that drive the growth of business. Hence, in order to understand and keep the shareholders informed and take a wise investment decision, SEBI on July 8, 2016 amended the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, making it mandatory for top 500 companies based on market capitalisation to frame a dividend distribution policy which needs to be disclosed in the Annual Reports and on the Company websites. The policy is required to be framed on certain parameters like circumstances under which shareholders may not get dividend, financial parameters and internal and external factors that will be considered while declaring dividend and policy for utilisation of retained earnings, etc.

Since the aforesaid policy document is to be placed on the website of the Company shareholders and prospective investors will get a fair idea about the factors that will determine payment of dividend.

## GIST OF THE STANDARD

The Standard on Dividend has undergone many changes from the time it was circulated for comments of the Members of the SSB and Industry. The Standard in its present form seeks to provide guidance on issues related to Dividend including but not limited to the following:

1. Sources from which dividend can be paid.
2. Declaration, payment and entitlement to dividend.
3. Unpaid Dividend and Revocation of Dividend.
4. Disclosures.

The standard also provides for additional compliances to be done by a Listed Company in accordance with the relevant SEBI Regulations. A summary of the major changes between the standard circulated for comments and the revised standard is as follows:

Standard No	Text of the Old Standard	Changes in the Revised Standard and our comments
Definitions	<p>“Final Dividend” means the Dividend recommended by the Board of Directors <b>at its meeting</b> and declared by the Members at an Annual General Meeting.</p> <p>“Interim Dividend” means the Dividend declared by the Board of Directors <b>at its meeting</b>.</p>	<p>The words ‘<b>at its meeting</b>’ have been deleted from the definitions.</p>
	<p>“Interim Financial Statements” means the financial statements prepared for an interim period shorter than a full financial year.</p>	<p>Definition deleted</p>



**SEBI on July 8, 2016 amended the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, making it mandatory for top 500 companies based on market capitalisation to frame a dividend distribution policy which needs to be disclosed in the Annual Reports and on the Company websites. The policy is required to be framed on certain parameters like circumstances under which shareholders may not get dividend, financial parameters and internal and external factors that will be considered while declaring dividend and policy for utilisation of retained earnings, etc.**

2.4	Declaration of interim dividend shall neither be made by a Committee of the Board nor by way of a resolution passed by Circulation by the Board	The said requirements have been deleted to provide the following: 2.4 Interim Dividend shall be declared at a meeting of the Board.
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Generally, the standard is as per the provisions of the Companies Act, 2013 and relevant SEBI Regulations. However in certain cases the provisions of the Standard are evolved further to facilitate the good corporate governance and standardisation of practices.

Few examples of such provisions are:

Standard No.	Provision
1.2.2	Interim Dividend cannot be declared out of free reserves
2.1	Dividend to be declared only on the recommendation of the Board, made at a meeting of the Board
2.4	Interim Dividend shall be declared at a meeting of the Board. Also Audit Committee to consider the financial results which shall thereafter be submitted to the Board for consideration and declaration of interim dividend

Dividends are paid more frequently in countries outside India. A summary of the comparison of the provisions of few countries is provided in the table below:

Criteria	Countries			
	UK	US	Australia	New Zealand
Approval needed	Board and Shareholder Approval through ordinary resolution.	Board and Shareholder Approval through ordinary resolution.	The Board of Directors approve and declare the Dividend.  However if AOA has an express provision, shareholders approval shall also be sought at the AGM.	The Board of Directors recommends for the Unanimous approval of the shareholders and the Board of Directors needs to satisfy the solvency test.
Disclosure	Disclosure in the Board's Report and Dividend Distribution policy			

Interim Dividend	Board of Directors to declare.	Board of Directors to declare.	Board of Directors to declare. Interim Dividend can be rescinded.	Board of Directors to declare.
Articles of Association (AOA)	AOA should contain the provision for distribution of Dividend.	AOA should have provisions for dividend declaration.	No express provisions needed in the AOA.	Constitution of the Company must provide for distribution of profits to shareholders.
Waiver of Dividend	-	-	-	Expressly stated in the Act.
Applicable Law	Companies Act, 2006.	There is no Federal Law.	Corporation Act, 2001.	Companies Act, 1993.
Tax Laws	Corporation Tax on the Corporates & Dividend Income taxable for individuals.	Corporate Tax paid by entities & Lower tax rate on dividend income than the ordinary income.	Non-residents are required to pay tax on dividends.	Corporate tax on Dividend & Dividend income is subject to withholding tax.
Payment within how many days.	No time limit specified. It can be within some weeks or a month of declaring the Dividend.	No period specified.  On the declaration date, Boards also announce a pay date for the dividend.	No period specified.  Mostly, Australian companies pay dividends between two to eight weeks after the ex-dividend date. The ex-dividend date is 4 trading days prior to the record date.	No period specified.
Declared from profits or reserves.	Out of profits.	There is no federal law.	Out of profits.	The Company needs to satisfy the solvency test before any distribution.  Solvency Test: a) the company is able to pay its debts as they become due in the normal course of business; and b) the value of the company's assets is greater than the value of its liabilities, including contingent liabilities.

## INTERIM DIVIDEND POSSIBLE UP TO AGM

As per section 123(3) of the Companies Act, 2013, the Board may declare Interim Dividend during any financial year out of the surplus in the profit and loss account and out of the profits of the financial year in which the interim dividend is sought to be declared.

This is further clarified under Standard 1.1.4 of Secretarial Standard on Dividend that the Board of Directors of a Company may declare Interim Dividend during any financial year or at any time during the period from closure of financial year till the holding of the Annual General Meeting.

## FINAL DIVIDEND - CAN'T IT BE DECLARED EVEN AFTER AGM?

Dividends are usually payable for a financial year after the final accounts are audited and the amount of distributable profits is available. Dividend for a financial year of the company (which is called 'final dividend') is payable only if it is declared by the Company at its Annual General Meeting (AGM) on the recommendation of the Board of Directors.

There is nothing in the Companies Act, 2013, which provides that Dividend may be declared **only** at the Annual General Meeting of the Company.

The Company Law Board in its circular no. 22 (7/9/74, C-II) dated 25<sup>th</sup> September, 1975 mentioned that -


*A Company which has not declared dividend at an annual general meeting may do so at a subsequent general meeting. However, it appears that once a Company has declared a dividend for a financial year at an annual general meeting, it may not be able to declare further dividend at an extraordinary general meeting in relation to the same financial year.*

The same has also been decided in the following cases:

**Calcutta High Court - Biswanath Prasad Khaitan v. New Central Jute Mills Co. Ltd.** [1961] 31 Comp. Cas. 125 (Cal.) wherein it was indicated that the declaration of dividend is a business of the annual general meeting and that there could not be a declaration of **further** dividend at the extraordinary general meeting.

**Calcutta High Court - Raghunandan Neotia v. Swadeshi Cloth Dealers Ltd.** (1964) 34 Com cases 570: AIR 1964 Cal 347 - declaration of dividend is a matter pertaining to the annual general meeting.

As per Ind AS 10, dividends are to be accounted as debit to the

 **A Company which has not declared dividend at an annual general meeting may do so at a subsequent general meeting. However, it appears that once a Company has declared a dividend for a financial year at an annual general meeting, it may not be able to declare further dividend at an extraordinary general meeting in relation to the same financial year.**

reserves as and when paid, unlike earlier accounting standard i.e. Indian GAAP, where dividend payable had to be disclosed as a liability and accounted in the concerned accounting year itself. This does not mean that the dividends can be declared and paid for the financial year already audited and recommended by the Board and declared in the AGM, after the AGM also. However, if the dividend has not been declared in the AGM, the same can be declared in a general meeting thereafter. The provisions of the Companies Act, 2013 are to be complied with for the declaration of final dividend.

## CAN THE SHAREHOLDER WAIVE/DEFER DIVIDEND

Final Dividend is generally declared at an AGM [Section 102(2) of the Companies Act, 2013] at a rate not more than what is recommended by the Directors in accordance with the AOA of a Company. However, they may declare the final dividend at a rate lower than the one recommended by the Board.

The Companies Act, 2013 (also Companies Act, 1956) is silent on waiver of dividend. However, enabling provision in Articles of Association of the Company is necessary since the same is binding on all members. Under the provisions of Section 5(2) of Companies Act 2013, the Company shall include additional matters in its Articles which may be considered necessary for its management.

Some Companies have altered their AOA to insert provisions for waiving/forgoing the Dividend.


Similarly, the promoters of few companies have waived their right to dividend every year.

In the case of interim dividend, the shareholders of the company can waive their right to receive dividend once the same is declared by the Board. However, in case of final dividend, board of directors recommend the payment of dividend after complying with the statutory provisions, and the same is then approved by the shareholders of the company at the AGM. Hence, shareholders of the company can waive their right to receive dividend once the same is proposed by the board of directors of the company but before it is declared. The difference between the two waivers exercised at different points of time is because unclaimed interim dividend, which has been declared, creates no debt or liability upon the company but such is not the case when it comes to declared unclaimed final dividend.

**Hence, the waiver instructions are to be provided every year by the members willing to forgo their rights of dividend. It should be preferably received by the Company before the record date is fixed for payment of the Dividend.**

## CONCLUSION

The Standards released by the Institute state that "*The Standards are in conformity with the provisions of the Act. However, if due to subsequent changes in the Act, a particular Standard or any part thereof becomes inconsistent with the Act, the provisions of the Act shall prevail.*"

Therefore, the Standards are in conformity with the applicable laws and aims to supplement the legal provisions with good practices in a constructive manner. The other applicable laws such as SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 that are applicable to listed companies, should also be complied with by the company. 

# Secretarial Standards – A New Paradigm for Progressive Board Governance and Mitigation of Board Level Risks

*The objective of Secretarial Standards is to strengthen the governance edifice among corporates in order to meet the growing expectations of the stakeholders through excelling governance practices. For the stakeholders to believe that corporates conform to good governance norms, it requires demonstration not mere assertion. Secretarial Standards actualizes an avenue to demonstrate the governance adhered by corporates. Secretarial Standards are a natural evolution in the realm of corporate governance architecture and non-financial reporting, in as much as SS deals with the board processes in addition to mandating governance disclosures.*



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## PRELUDE

**T**he world is changing rapidly and the digital trends are transforming the way companies are governed. Cross industry disruptions have become the new normal. Never has been the need for better governance greater. Navigating the myriad corporate governance norms prescribed in the rule book is not an easy task. The governance challenges are too big to be undertaken by intuitive and reactive management approaches. Business historians have penned about the failures of many of the most successful corporates. When Companies do fail, it is usually not because of deliberate neglect but rather through an unfortunate chain of events, a failure to recognise steps that should have been taken - in short, honest but still catastrophic mistakes<sup>1</sup>. Corporates have also plunged in astigmatism not only due to disruptive changes and shifts in the economy but also due to departure from the fundamental value systems resulting from the insatiable greed. There are limits for governance priorities even for most impressive corporates due to demanding business environment in the integrated global economy coupled with the subtleties in organisational dynamics. Thus, it is imperative to take cognizance of the fact that the governance in corporate world is divided between enterprising entrepreneurs vigilantly guarding their interests on the one hand and on the other by the board, ever demanding regulators, external stakeholders vying for the moon in governance delivery.

## SECRETARIAL STANDARDS - A PROGRESSIVE CORPORATE GOVERNANCE FRAMEWORK

Are Secretarial Standards (SS) another tool for compliance or is it a progressive framework for governance? Whether the standards

hold out benefits at the end of the rainbow, which will lead to better governance? The answer to these questions lies in discussion and analysis about the Secretarial Standards. This article strives to articulate the significant provisions in SS-1 coupled with lucid explanation and some vivid real-world scenarios.

SS is a result of the aspiration to permeate through the complexity of governance norms with an objective to create fundamental building blocks of governance. As governance norms have complexities, SS provides the much needed clarity and figures out the priorities to develop governance acumen. By setting the tone for governance culture in organizations, SS delivers a reliable execution mechanism for governance prescriptions and thus brings dynamism in Board governance. Leadership without the discipline of execution is incomplete and ineffective.<sup>2</sup>The three processes—people, strategy, and operations — remain the building blocks and heart of good execution.<sup>3</sup> Corporate Governance requires not only right regulations, but also right framework for execution. These are among the many reasons why there is a need to move step-by-step to deal with issues and problems and develop mechanism for execution of the prescribed governance norms. Such execution mechanism requires apposite guidance, practical and responsible governance prescriptions so that implementation of such norms are done without a miscue. The execution mechanism in SS embeds the governance to operational processes of the company, thus providing fillip for the progression of governance in an organization. The objective of SS is to strengthen the governance edifice among corporates in order to meet the growing expectations of the stakeholders through excelling governance practices.

## IS GOOD COMPLIANCE A VITAL NEED FOR GOOD GOVERNANCE?

Good Compliance is a prerequisite and a vital need for good governance. In other words, it may be apt to say that where there is governance, there is compliance and where there is compliance, there lies governance. Like a good strategist demonstrating the peripheral vision to see what is there beyond the obvious, SS has attempted to analyse, prepare, plan, and think about the unknown unknowns and make careful judgments about them to provide pertinent solutions. It defines the problem, identifies the conflicts and ambiguities in the existing regulatory mechanism and provides

<sup>1</sup> Why Companies fail – The 10 big reasons businesses crumble, and how to keep yours strong and solid, Markt Ingebretsen, pp.12

<sup>2</sup> Execution - The Discipline of Getting Things Done, Larry Bossidy and Ram Charan

<sup>3</sup> Ibid



resolution to overcome those problems conflicts and ambiguities. SS is a strategic governance framework than a compliance tool. If there is no mechanism to deal with problems, conflicts and ambiguities in the governance norms, then there can be no effective governance and that's the precise space SS commands in the corporate governance framework, besides reducing and minimizing the ambiguities in law.


### SECRETARIAL STANDARDS – IT IS DIFFERENT FROM FAMILIAR AND IT PUTS THE ISSUES IN CONTEXT

For the stakeholders to believe that corporates conform to good governance norms, it requires demonstration not mere assertion. SS actualizes an avenue to demonstrate the governance adhered by corporates. SS has a distinctive quality since it is more specific and proffers definitive guidance on various issues not comprised in the law or regulations, rather than leaving the issues to be decided based on individual management's judgments and preferences, which may not meet the desired objectives. SS does not tend to be a technical tool but a transformative mechanism towards better governance, thus setting a governance process in motion. In recent times, world over non-financial reporting has been gaining lot of momentum and importance, with focus being on GRC - Governance, Risk and Compliance. Therefore, SS is a natural evolution in the realm of corporate governance architecture and non-financial reporting, in as much as SS deals with the board processes in addition to mandating governance disclosures in the board's report about adherence to SS besides necessitating a review and reporting by the Secretarial Auditor in the Secretarial Audit Report.

SS is an inclusive execution mechanism for execution of corporate governance norms. It is important to appreciate that the need for such inclusion arises because SS supports the strengths in the existing regulatory mechanism [especially the Companies Act, 2013 and the SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015]. In SS, there is a logical envisioning of the issues at hand in tandem with the statutory legal provisions and attempting to create solutions to resolve the ambiguities and conflicting issues. In addition to being a sign board on governance process, SS aims not just to preserve the governance mechanism but also enhance the positive outcomes.

### SS AND ITS IMPACT ON THE BOARD DECISION DYNAMICS

Navigating the management - board relationship with the inherent power dynamics between the executive management vis-à-vis the board, recognizing the governance needs to be adhered by flawless

 **SS is a result of the aspiration to permeate through the complexity of governance norms with an objective to create fundamental building blocks of governance. As governance norms have complexities, SS provides the much needed clarity and figures out the priorities to develop governance acumen. By setting the tone for governance culture in organizations, SS delivers a reliable execution mechanism for governance prescriptions and thus brings dynamism in Board governance.**

execution, and making progress in a fluid, complex, and uncertain situation needs a reliable execution mechanism. These factors besides bringing into light the board decision dynamics will display to the outside world the effectiveness of the board per se. In the words of W Edwards Deming "If you can't describe what you are doing as a process, you don't know what you're doing, the rigour in process is what will determine the quality of the outcome." Thus, the board processes need structures that will encourage debate, discussion and analysis, which will result in quality outcomes. Bad decisions made with good intentions, are still bad decisions.<sup>4</sup> Having regard to these dynamics, Secretarial Standard on Meetings of the Board of Directors (SS-1) aptly provides various mechanisms relating to the board processes. For instance, how an agenda item should be put up for the consideration of the Board and the prescription in this regard in SS-1 is highlighted below:-

Paragraph 1.3.8 provides that each item of business requiring approval at the meeting shall be supported by the following:-

1. A note setting out the details of the proposal
2. Relevant material facts that enables directors to understand the meaning, scope and implications of the proposal;
3. Nature of concern or interest, if any, of the Director.

Board decision making dynamics are dependent on host of factors. Board Personalities comprise of the monopolist, naysayer and an informed generalist (one who usually brings something perhaps even more important than depth of expertise in a particular field i.e. common-sense). Board members vary greatly in making decisions due to their varying levels of abilities and motivations. Groupthink is the most important bias for boards in decision making. The inherent desire for harmony and the tendency to avoid speaking out may hamper informed decision making. Yet another issue is the cognitive bias, which results in distorted thinking. Excessive reliance on experts by the board members rather than being an informed generalist also contributes to the cognitive bias.<sup>5</sup> Collegiality is another factor which may hamper board decision making. Collegiality to a certain extent is great as it is necessary for the smooth deliberations and functioning of the board. But, too much collegiality may blend into group think. Rather, a constructive conflict produces better decision-making. Without collegiality, a board can become paralysed, but collegiality can go too far if it prevents directors from challenging a peer with strong personality.<sup>6</sup> Obviously it is not ideal to have disruptor in the board-room, who disagrees with everything, but it is also not great to have everybody agreeing with everything without asking any questions.<sup>7</sup> The Executive management (CEOs, / Managing Directors) should strive to leverage the board talent to the best advantage of the Company without letting them micromanage the affairs of the Company. It may be pertinent to recall what Malcolm Gladwell has to say about good decision making in his book - Blink: The Power of Thinking Without Thinking—"The key to good decision making is not knowledge. It is understanding. We are swimming in the former. We are desperately lacking in the latter."

SS-1 significantly focuses on various aspects of decision dynamics

- 4 How The Mighty Fall: And Why Some Companies Never Give In, James C. Collins
- 5 Cognitive Bias in Director Decision-Making By Delaware Vice Chancellor Travis Laster, Corporate Governance Advisor, November / December, 2012 Volume 20, Number 6
- 6 Owning up The 14 questions every board members needs to ask, Ram Charan, pp. 104
- 7 Cognitive Bias in Director Decision-Making By Delaware Vice Chancellor Travis Laster, Corporate Governance Advisor, November / December, 2012 Volume 20, Number 6

of the board. SS-1 provides for intellect oriented governance management systems rather than an intuition based management system. In this process, it also designs the decision operating mechanism and revitalizes the spirit of governance. It may be worthy to mention that SS-1 has the following stipulations in some of the broad board scenarios discussed above.

SS-1 Paragraph Reference	SS-1 Prescription
6.1.1	The Chairman of the Board or in his absence, the Managing Director or in their absence, any Director other than an Interested Director, shall decide, before the draft Resolution is circulated to all the Directors, whether the approval of the Board for a particular business shall be obtained by means of a Resolution by circulation.
6.1.2 / 6.3.1	Power of one-third of the total number of Directors to require an item be considered in a meeting in lieu of a resolution by circulation.
1.3.10	Any item not included in the Agenda may be taken up for consideration with the permission of the Chairman and with the consent of a majority of the Directors present in the Meeting.  The decision taken in respect of any other item shall be final only on its ratification by a majority of the Directors of the company, unless such item was approved at the Meeting itself by a majority of Directors of the company.
1.3.7	Power of the majority directors to grant consent for tabling Unpublished Price Sensitive Information
1.1.2	Power of the Majority Directors present at the meeting to express dissent or object to adjournment of a board meeting for reasons other than quorum

The ways of expressing disagreement in a corporate form of organization may vary from more direct and upfront to muted observations. By figuring out the priorities and decision making dynamics through appropriate division of powers between the executive management and non-executive and independent directors, necessary governance checks appears to have been assured by SS-1. Likewise, SS-1 also evolves a step-by-step hierarchy in decision making on various governance matters as highlighted. Thus, SS-1 besides having a balanced approach has also ensured that the best of collective minds would be at work.

### SS-1 AND RISK MITIGATION

Board can better track the ever expanding range of risks by defining the potential sources and viewing risk through each of those lenses. The most important lens for tracking risk is financial. Boards have to keep a close watch on vulnerabilities in the health and management of the balance sheet. But look, too, at strategy and operations, politics and geopolitics, reputation, and corporate culture.<sup>8</sup>

It is important for the board to understand and focus on the issues that are critical to the business. It is necessary to craft the board agenda to build an understanding of the company's strategy piece by piece. They provide an overview of the important issues and trends in the external environment and update it continually.<sup>9</sup> Every decision will have its inherent risk. Does that mean one should avoid taking decisions to avoid risk? Managing risk does not entail eliminating it; the competence required is how to assess it and how

to manage it. Management should avoid information black out to the Board, as such blackout may bring unintended consequences through poor decision making.<sup>10</sup> The management should provide a comprehensive picture of the proposed agenda item and thus avoid information blackout. There are significant provisions in SS-1, which aims to mitigate considerable risks at the board level, which are highlighted in the following table:-

SS-1 Paragraph Reference	SS-1 Prescription	Mitigated Risk
1.1.2	To express dissent or object to adjournment of a board meeting for reasons other than quorum by the majority directors present at the meeting	Undue usurpation of authority / Governance Risk
1.3.3 & 1.3.7	Specifying the contents of the board meeting notice and agenda	Information Risk
1.3.7	To grant consent for tabling Unpublished Price Sensitive Information [Majority consent]	Operational Risk / Compliance Risk
1.3.10	Any item not included in the Agenda may be taken up for consideration with the permission of the Chairman and with the consent of a majority of the Directors present in the Meeting.  The decision taken in respect of any other item shall be final only on its ratification by a majority of the Directors of the company, unless such item was approved at the Meeting itself by a majority of Directors of the company.	Governance Risk
1.3.11	To provide agenda and notes on agenda on shorter notice and conditions to be fulfilled for doing so at shorter notice	Decision making Risk / Governance Risk
6.1.2 / 6.3.1	Power of one-third of the total number of Directors to require an item be considered in a meeting in lieu of a resolution by circulation.	Governance Risk
6.2.3	Specifying time limit for approving resolution by circulation	Opportunity Risk / Business Risk
7.2.1.2	Mandating recording of details of invitees to the Board meetings	Information Risk / Data Risk

### RECORDING BOARD DELIBERATIONS AND DECISIONS – IS IT A RITUAL OR ROBUST GOVERNANCE?

How many times we have seen, a CEO or a director saying in a board meeting - I don't recall, but I am sure it is recorded there in the minutes. Writing minutes is not a ritual but it is an essential practice of good governance. It is imperative to capture salient points of the deliberations besides the actual decisions taken in a board meeting. Such detailed writing of minutes can help to avoid repeating errors in the decision-making process besides leading to improvement in decision making. The importance attached to minutes is evident from Paragraph 7 of the SS-1, which postulates elaborate requirements with respect to the Minutes. Especially, Paragraph 7.2.2.2 specifically states that "apart from the resolution or the

8 Owning up The 14 questions every board members needs to ask, Ram Charan, pp. 21

9 Boards at work – How Corporate Boards create competitive advantage, Ram Charan, pp. 101

10 Ibid, pp. 102

**SS-1 significantly focuses on various aspects of decision dynamics of the board. SS-1 provides for intellect oriented governance management systems rather than an intuition based management system. In this process, it also designs the decision operating mechanism and revitalizes the spirit of governance.**

decision, Minutes shall mention the brief background of all proposals and summarise the deliberations thereof. In case of major decisions, the rationale thereof shall also be mentioned". Thus, writing minutes of the agenda is a bad practice, whereas writing minutes, which captures the essence of the discussions at the meeting, decision determinants are considered to be a good practice. To emphasise the importance of practice, Malcolm Gladwell in Outliers: The Story of Success reminds us that Practice isn't the thing you do once you're good. It's the thing you do that makes you good. Moreover, the importance of minutes is buttressed by the significant powers given to the Directors in SS-1 with respect to the Minutes of the Board and Committee meetings, which are summarised as follows:-

SS-1 Paragraph Reference	SS-1 Prescription
4.1.5 / 7.7.1	Director's Power to inspect attendance registers, minutes
7.4	Director's right to receive a copy of the minutes
7.7.2	Director's right to receive a copy of the minutes prior to and post his / her tenure as a Director in the Company

### SECRETARIAL STANDARDS – AN EFFECTIVE SUPPORTING MECHANISM TO BOARD OF DIRECTORS TO FULFIL THEIR DUTIES AND RESPONSIBILITIES ENVISAGED UNDER THE COMPANIES ACT, 2013 AND THE LISTING REGULATIONS

To understand how SS serves as a supporting mechanism to the Board of Directors (including the Independent Directors) to fulfil their duties and responsibilities and play an effective role in governance, it is imperative to map the provisions under the Secretarial Standards vis-à-vis the significant provisions of the Companies Act, 2013 and Chapter II of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 specifying the duties and responsibilities of such directors.

### MAPPING OF PROVISIONS IN SS-1 & SS-2 VIS-À-VIS COMPANIES ACT, 2013 AND SEBI LISTING REGULATIONS

Governance Realm	Information needs of the Board
Statutory norms under Schedule IV of the Companies Act, 2013	<ul style="list-style-type: none"> <li>Independent Directors shall seek appropriate clarification or amplification of information and, where necessary, take and follow appropriate professional advice and opinion of outside experts at the expense of the company</li> <li>In order to fulfil their responsibilities, members of the board of directors shall have access to accurate, relevant and timely information</li> <li>Members of the board of directors shall act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the listed entity and the shareholders.</li> </ul>
SEBI Listing Regulations	



SS-1 Prescriptions	Paragraph 1.3.8 & 7.7.1 <ul style="list-style-type: none"> <li>Each item of business requiring approval at the Meeting shall be supported by a note setting out the details of the proposal, relevant material facts that enable the Directors to understand the meaning, scope and implications of the proposal and the nature of concern or interest, if any, of any Director in the proposal, which the Director had earlier disclosed. Where approval by means of a Resolution is required, the draft of such Resolution shall be either set out in the note or placed at the Meeting.</li> <li>The Minutes of Meetings of the Board and any Committee thereof can be inspected by the Directors.</li> </ul>
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Governance Realm	Conflict of interest situations
Statutory norms under Chapter II of the Listing Regulations	Members of the board of directors and key managerial personnel shall disclose to the board of directors, whether they, directly or indirectly, or on behalf of the third parties, have a material interest in any transaction or matter directly affecting the listed entity.
SS-1 Prescriptions	Paragraph 3.2 A Director shall neither be reckoned for Quorum nor shall be entitled to participate in respect of an item of business in which he is interested. However, in case of a private company, a Director shall be entitled to participate in respect of such item after disclosure of his interest.

Governance Realm	Governance of Board Committees
Statutory norms under Chapter II of the Listing Regulations	When committees of the board of directors are established, their mandate, composition and working procedures shall be well defined and disclosed by the board of directors
SS-1 Prescriptions	Scope of SS-1 The principles enunciated in this Standard for Meetings of the Board of Directors are also applicable to Meetings of Committee (s) of the Board, unless otherwise stated herein or stipulated by any other applicable Guidelines, Rules or Regulations.

Governance Realm	Governance concerns
Statutory norms under Schedule IV of the Companies Act, 2013	Where the Independent Directors have concerns about the running of the company or a proposed action, ensure that these are addressed by the Board and, to the extent that they are not resolved, insist that their concerns are recorded in the minutes of the Board meeting.



SS-1 Prescriptions	<p>Paragraph 7.2.2.1&amp; 7.4</p> <ul style="list-style-type: none"> <li>Minutes shall among other things contain the views of the Directors particularly the Independent Director, if specifically insisted upon by such Directors.</li> <li>Within fifteen days from the date of the conclusion of the Meeting of the Board or the Committee, the draft Minutes thereof shall be circulated by hand or by speed post or by registered post or by courier or by e-mail or by any other recognized electronic means to all the members of the Board or the Committee, as on the date of the meeting, for their comments.</li> <li>The Directors, whether present at the Meeting or not, shall communicate their comments, if any, in writing on the draft Minutes within seven days from the date of circulation thereof, so that the Minutes are finalized and entered in the minutes book within the specified time limit of thirty days.</li> </ul>
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<b>Governance Realm</b>	<b>Transparency in governance / decision making mechanism</b>
Statutory norms under Chapter II of the Listing Regulations	<ul style="list-style-type: none"> <li>The board of directors and senior management shall conduct themselves so as to meet the expectations of operational transparency to stakeholders while at the same time maintaining confidentiality of information in order to foster a culture of good decision making;</li> <li>Monitoring the effectiveness of the listed entity's governance practices and making changes as needed.</li> </ul>

The importance attached to minutes is evident from Paragraph 7 of the SS-1, which postulates elaborate requirements with respect to the Minutes. Especially, Paragraph 7.2.2.2 specifically states that “apart from the resolution or the decision, Minutes shall mention the brief background of all proposals and summarise the deliberations thereof. In case of major decisions, the rationale thereof shall also be mentioned”.



Authenticity in corporate governance is largely defined by what stakeholders see in a company. SS-1 by defining various execution prescriptions brings authenticity to governance delivery. SS-1 creates engagement within the Boards, encourages more productive and analytical dialogue and discussion between board members, stimulates the decision making dynamics and imbues forward planning.

SS-1 Prescriptions	<p>Paragraph 1.1.2, 1.3.7 1.3.10, 1.3.11 6.1.2 &amp; 7.2.2.2</p> <ul style="list-style-type: none"> <li>Power granted to majority of directors to express dissent or object to adjourn of a meeting by the Chairman, when the quorum is present. [1.1.2]</li> <li>The Agenda, setting out the business to be transacted at the Meeting, and Notes on Agenda shall be given to the Directors at least seven days before the date of the Meeting, unless the Articles prescribe a longer period. [1.3.7]</li> <li>Any item not included in the Agenda may be taken up for consideration with the permission of the Chairman and with the consent of a majority of the Directors present in the Meeting. [1.3.10]</li> <li>To transact urgent business, the Notice, Agenda and Notes on Agenda may be given at shorter period of time than stated above, if at least one Independent Director, if any, shall be present at such Meeting. If no Independent Director is present, decisions taken at such a Meeting shall be circulated to all the Directors and shall be final only on ratification thereof by at least one Independent Director, if any. In case the company does not have an Independent Director, the decisions shall be final only on ratification thereof by a majority of the Directors of the company, unless such decisions were approved at the Meeting itself by a majority of Directors of the company. [1.3.11]</li> <li>Where not less than one-third of the total number of Directors for the time being require the Resolution under circulation to be decided at a Meeting, the Chairman shall put the Resolution for consideration at a Meeting of the Board. [6.1.2]</li> <li>Apart from the Resolution or the decision, Minutes shall mention the brief background of all proposals and summarize the deliberations thereof. In case of major decisions, the rationale thereof shall also be mentioned. [7.2.2.2]</li> </ul>
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<b>Governance Realm</b>	<b>Board nominations</b>
Statutory norms under Chapter II of the Listing Regulations	Ensuring a transparent nomination process to the board of directors with the diversity of thought, experience, knowledge, perspective and gender in the board of directors

<p>SS-2 Prescriptions</p>	<p>Paragraph 1.2.5 of SS-2</p> <ul style="list-style-type: none"> <li>▪ In all cases relating to the appointment or re-appointment and/or fixation of remuneration of Directors including Managing Director or Executive Director or Whole - time Director or of Manager or variation of the terms of remuneration, details of each such Director or Manager, including age, qualifications, experience, terms and conditions of appointment or re-appointment along with details of remuneration sought to be paid and the remuneration last drawn by such person, if applicable, date of first appointment on the Board, shareholding in the company, relationship with other Directors, Manager and other Key Managerial Personnel of the company, the number of Meetings of the Board attended during the year and other Directorships, Membership/ Chairmanship of Committees of other Boards shall be given in the explanatory statement.</li> <li>▪ In case of appointment of Independent Directors, the justification for choosing the appointees for appointment as Independent Directors shall be disclosed and in case of re-appointment of Independent Directors, performance evaluation report of such Director or summary thereof shall be included in the explanatory statement.</li> </ul>
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### DIVERGENT GOVERNANCE PRACTICES AND EVOLVING HARMONY

As may be evident from the discussions in the preceding paragraphs, SS strives to consolidate the divergent governance practices and aims to harmonize such practices. In his book, The (Honest) Truth about Dishonesty, Duke behavioural economist Dan Ariely reminds us that only a few of us are really bad people, whereas most of us are good people who sometimes do bad things. Research in the area of behavioural business ethics has demonstrated that most of the initial ethical transgressions in business go unnoticed, even for those committing the transgression. We rationalize our bad behaviours to such an extent that we do not realize we are crossing ethical boundaries until it is too late. We possess the ability to convince ourselves that we are not doing anything wrong, whereas at that exact moment we may have set the first step on the slippery slope.<sup>11</sup> Authenticity in corporate governance is largely defined by what stakeholders see in a company. SS-1 by defining various execution prescriptions brings authenticity to governance delivery. SS-1 creates engagement within the Boards, encourages more productive and analytical dialogue and discussion between board members, stimulates the decision making dynamics and imbues forward planning. SS seeks to clear the mist in the regulatory norms by framing the relevant issues and helps in resolution of such issues. SS thus plays a vital and instrumental role in meeting the governance expectations of the stakeholders concerned besides harmonizing the diverse governance practices. SS creates governance reliability by attempting to put the governance to work. SS is a self-orientation mechanism for corporates to deal with problems, ambiguities and conflicts in governance norms. In sync with the words of Benedict

<sup>11</sup> <https://hbr.org/2015/05/compliance-alone-wont-make-your-company-safe> – Last accessed on September 24, 2017

The ways of expressing disagreement in a corporate form of organization may vary from more direct and upfront to muted observations. By figuring out the priorities and decision making dynamics through appropriate division of powers between the executive management and non-executive and independent directors, necessary governance checks appears to have been assured by SS-1.



Paramanand in his book CK Prahalad: The Mind of the Futurist - Rare Insights on Life, Leadership & Strategy «Don't follow best practices, instead go on and create the Next Practice», SS will keep evolving, and would continue to provide an enhanced governance framework in the years to come.

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# 2

# RESEARCH CORNER



- STOCK INDICES VALUATION: AN AI-ANN APPROACH
- THE ICSI-CCGRT INVITES MANUSCRIPTS ON MULTIDISCIPLINARY CASE STUDIES



# Stock Indices Valuation: An AI-ANN Approach



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*Valuation of financial data is considered as the first step towards intelligent investing. An investor while taking an investment decision anticipates the true fundamental value of his/her decision. Without the assurance for a fundamental value, any investor set adrift in a desert of uncertainty where price volatility acts as a cause of concern. The study presents an empirical case which is intended to develop a best fit technique suitable for an investor while taking an investment decision. Twenty various AI-ANN models with four architectures are constructed to predict the crude oil series. Errors when calculated by using two valuation error measures, observed that 3-5-1 ( $\alpha=0.7$  and  $\epsilon=0.7$ ) model has the minimum error and hence, best suits to predict the estimated series. MSE is found to be the best suitable valuation error measure for the crude oil series.*

## INTRODUCTION

Stock indices valuation or stock valuation is the technique that calculates theoretical values of stocks of companies which are trading in the stock exchanges. Through these methods future prices of the stocks are judged. Stocks that are predicted to be undervalued are purchased and overvalued are sold with an expectation that undervalued stocks will over rise, while overvalued stocks will lose its market hold in near future. According to Professor J.M.Keynes, one of the most popular and neo-classical economists of the world, stock valuation is rather not a prediction but really a convention that guides the investors and ensures them that the stocks they are choosing are liquid.

In the literature there is huge discussion on the prediction techniques like traditional regression and GARCH family of models. The matter of concern is appropriateness of a technique based on the historical data that will be best suitable for any study under consideration. In this connection, there is much discussion everywhere among the researchers on the use of AI techniques as a technique of stock market valuation. Artificial Neural Network (ANN) a tool of AI is the collections of mathematical models that emulate the real neural structure of the brain. In general, ANN is made up of individual interconnected

simple processing elements called *neurons*, arranged in a layered structure to form a network that is capable of performing massively parallel computation. Depending on the structure of the network, a series of connecting neuron which weights are adjusted in order to fit a series of inputs to another series of known outputs. Since the connecting weights are not related to physical identities, the approach is considered as a black-box model.

## REVIEW OF RELATED LITERATURE

The review of literature on the direct use of AI-ANN in valuing stock market indices is scanty in India. However, for the sake of gathering information, few related reviews are highlighted below.

The very first use of ANN to predict share market prices was derived by Kimoto et al. (1990) who used this technique to predict Tokyo stock exchange index. Tang and Fishwick (1993) and Wang and Leu (1996) provided the general introduction of how a neural network should be developed to model financial and economic time series. Furthermore, Minzuno et al. (1998) applied ANN technique to Tokyo stock exchange to predict the buying and selling signals with an overall prediction rate of 63 per cent. Phua et al. (2000) applied neural network with genetic algorithm to the Singapore stock exchange market and predicted the market direction with an accuracy of 81 per cent. Sarangi and Sarangi (2010) examined and analysed the use of ANN as a forecasting tool for predicting the future electric load demand and the impact of different neurons in the hidden layer in a three layered ANN architecture. They concluded ANN as a powerful tool for decision making in forecasting. Khan et al. (2011) used the back propagation algorithm for training session and multilayer Feedforward network as a network model for predicting Bangladesh stock exchange market index values. Perwej and Perwej (2012) investigated to predict the daily excess returns of Bombay Stock Exchange (BSE) indices by using the feed-forward ANN. Sarangi and Dublish (2013) used the gold return series data with both the GARCH family and ANN models. Their study revealed that ANN models better predict the series than the traditional GARCH family of models.

## OBJECTIVES OF THE STUDY

This study is based on the following objectives:

- To develop a methodological review of the stock valuation techniques that are useful in valuating stock market indices.
- To develop a suitable ANN model by modeling four architectures by changing numbers of hidden neurons, learning rate and momentum value.
- To forecast and then to evaluate forecasting errors of the constituted models. Crude oil return series data has been considered an empirical case analysis.

## STOCK VALUATION TECHNIQUES: A METHODOLOGICAL STUDY

The general methodology used to make such forecasts entails finding the 'equation of motion' driving a stochastic process and using that equation to predict subsequent outcomes. Let  $y_t$  denote the value of a data point at period 't', the equation of motion used to construct components of the  $y_t$  series are:

\* The author thanks Dr. S.K. Dixit, Mentor-Research Cell and CS Sonia Bajjal, Director for encouraging, guiding and giving necessary inputs while developing the manuscript.

$$\begin{aligned}
 \text{Trend : } T_t &= 1 + 0.1t \\
 \text{Seasonal : } S_t &= 1.6 \sin(t\pi / 2) \\
 \text{Irregular : } I_t &= 0.7 I_{t-1} \pm \varepsilon_t
 \end{aligned} \quad \dots (1)$$

where  $T_t$  = value of the trend component in period  $t$   
 $S_t$  = value of the seasonal component in  $t$   
 $I_t$  = the value of the irregular component in  $t$   
 $\varepsilon_t$  = a pure random disturbance in  $t$

Thus, the irregular disturbance in 't' is 70% of the previous period's irregular disturbances plus a random disturbance term.

In equation (1), all the three equations are the type of difference equation. In its most general form, a difference equation expresses the value of a variable as a function of its own lagged values, time, and other variables. The trend and seasonal terms are both functions of time and the irregular term is a function of its own lagged value and the stochastic variable  $\varepsilon_t$ .

**GARCH FAMILY OF MODELS:**

Let  $y$  be the function to evaluate i.e.,  $y=f(t)$  at  $t_0$  and  $t_0+h$  to form:

$$\Delta y = f(t_0 + h) - f(t_0) \quad \dots (2)$$

As a practical manner, most economic time series data are collected for discrete time series. Thus, the equidistant intervals like  $t_0, t_0+h, t_0+2h, t_0+3h, \dots$  are considered and conveniently set  $h=1$ . But, it should be carefully understood that a discrete time series implies  $t$ , but not necessarily  $y_t$  is discrete.

**The ARMA (p,q) Model:**

It is now possible to combine a moving average process (discussed above) with a linear difference equation to obtain an autoregressive moving average model. Considering the  $q$ th- order difference equation:

$$y_t = k + \sum_{j=1}^q A_j y_{t-j} + x_t \quad \dots (3)$$

**The ARCH Model:**

One approach to forecasting the variance is to explicitly introduce an independent variable that helps to predict the volatility. Let us consider a simplest case like the following as:

$$y_{t+1} = \varepsilon_{t+1} x_t \quad \dots(4)$$

$y_{t+1}$  = the variance of interest to predict

where  $\varepsilon_{t+1}$  = a white-noise disturbance term with variance  $\sigma^2$

$x_t$  = an independent variable that can be observed at period  $t$

Engle (1982) explained that it is possible to simultaneously model the mean and variance of a given time series data. As a primary step to understanding the logic of Engle's methodology, it is required to remember that conditional forecasts are vastly superior to unconditional forecasts. To elaborate, let that one estimates the stationary ARCH model  $y_t = \alpha_0 + \alpha_1 y_t + \varepsilon_t$ , and want to forecast  $y_{t+1}$ . The conditional forecast of  $y_{t+1}$  will be

$$E_t y_{t+1} = \alpha_0 + \alpha_1 y_t \quad \dots(5)$$

The simplest example from the class of multiplicative conditionality heteroskedastic models proposed by Engle (1982) is:

$$\varepsilon_t = b_t \sqrt{k + A_1 \varepsilon_{t-1}^2} \quad \dots(6)$$

where  $b_t$  = white-noise process such that  $\sigma_b^2 = 1, b_t$  and  $\varepsilon_{t-1}$  are independent of each other, and  $k$  and  $A_1$  are constants such that  $k>0$ , and  $0<A_1<1$ . Now, let us consider the properties of the  $\{\varepsilon_t\}$  sequence.

The ARCH process derived at equation (6) has been later on extended into several interesting ways. Engle's (1982) original contribution considered the entire class of higher-order ARCH (q) process as follows:

$$\varepsilon_t = b_t \sqrt{k + \sum_{i=1}^q A_i \varepsilon_{t-i}^2} \quad \dots(7)$$

In the above equation, all shocks from  $\{\varepsilon_{t-1}\}$  to  $\{\varepsilon_{t-q}\}$  have a different equation on  $\{\varepsilon_t\}$ , so that the conditional variance acts like an autoregressive process of order 'q'.

**The GARCH Models:**

The key feature of GARCH (p, q) model is that the conditional variance of the disturbances of the  $y_t$  sequence constitutes an ARMA (p, q) process. Since  $E_{t-1} \varepsilon_t = h_t$ .

$$E_{t-1} \varepsilon_t^2 = k + \sum_{i=1}^p G_i h_{t-i} + \sum_{j=1}^q A_j \varepsilon_{t-j}^2 \quad \dots(8)$$

The above derived equation (8) looks much like an ARMA (q, p) process in the  $\{\varepsilon_t^2\}$  sequence.

**The EGARCH Model:**

Nelson (1991) proposed the Exponential Generalised Autoregressive Conditional Heteroscedasticity (EGARCH) model. He extended the ARCH framework in order to better describe the behaviour of return volatilities. The most important contribution was to propose a model, EGARCH, to test the hypothesis that the variance of the return was influenced directly by positive and negative excess returns. The Nelson's model can be of the form as:

$$\begin{aligned}
 r_t &= \mu_t + \varepsilon_t \\
 \mu_t &= \phi_0 + \phi_1 r_{t-1} + \dots + \phi_s r_{t-s} \\
 \ln(h_t) &= k + \sum_{i=1}^p G_i \sigma_{t-i}^2 + \sum_{i=1}^o \gamma_i \frac{\varepsilon_{t-i}}{\sigma_{t-i}} + \sum_{j=1}^q A_j \left( \left| \frac{\varepsilon_{t-j}}{\sigma_{t-j}} \right| - \sqrt{\frac{2}{\pi}} \right)
 \end{aligned} \quad \dots(9)$$

The parameters estimated in the formula measures as defined earlier.

**The GJR-GARCH Model:**

The GJR-GARCH model was introduced by a group of authors Glosten, Jagannathan, and Runkle (1993) and was named with the first letter of each author. A GJR-GARCH (p,q) process is defined as:

$$\begin{aligned}
 r_t &= \mu_t + \varepsilon_t \\
 \mu_t &= \phi_0 + \phi_1 r_{t-1} + \dots + \phi_s r_{t-s} \\
 h_t &= k + \sum_{i=1}^p G_i \sigma_{t-i}^2 + \sum_{i=1}^a \gamma_i \varepsilon_{t-i}^2 I_{[\varepsilon_{t-i} < 0]} + \sum_{j=1}^q A_j \varepsilon_{t-j}^2
 \end{aligned}
 \dots(10)$$

The parameters estimated in the study measures as defined usual.

**Regression Model:**

Here a model has been formulated to observe the relationship between the dependent variable close (Cn) value of the same day to that of the previous day's Open (O), High (H), Low(L) and Closed value as the independent variables. The mathematical relationship of the regression model can be expressed as:

$$C_n = \alpha_0 + \beta_1 O_{t-1} + \beta_2 H_{t-1} + \beta_3 L_{t-1} + \beta_4 C_{t-1} + \varepsilon_t \dots(11)$$

where,  $\alpha_0$  is the intercept,  $\beta_1, \beta_2, \beta_3$  and  $\beta_4$  are the slope of the function to be estimated and  $\varepsilon_t$  is the error term containing all the factors that are affecting dependent variable other than considered independent variable in the above model. The variables  $O_{t-1}, H_{t-1}, L_{t-1}$  and  $C_{t-1}$  are the previous day Open, High, Low, and Closing values of indices.  $Cn_t$  is the next day closing value.

**METHODOLOGY**

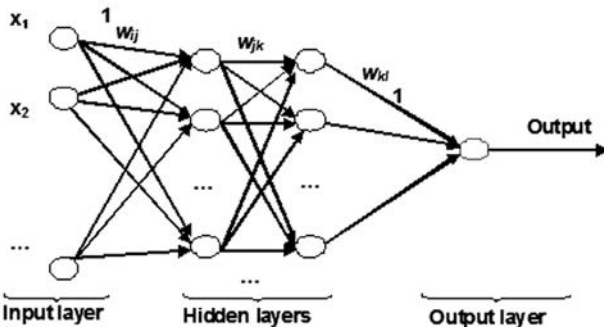
Since the scope of the study is widened, hence, the models adopted in this study to justify the formulated objectives have been categorized in following sub-sections separately:

**Data:**

Separate programming have been developed for all the considered specifications and models in Matlab 7.0 software to predict the daily return series from 1<sup>st</sup> January, 2014 to 30<sup>th</sup> April, 2018. 10 days data from 1<sup>st</sup> May, 2018 to 11<sup>th</sup> May, 2018 has been predicted and compared with actual data for calculating the valuation error.

**Basic Structure of an ANN:**

The basic structure of an ANN consists of artificial *neurons* (similar to biological neurons in the human brain) that are grouped into *layers*. The most common ANN structure consists of an input layer, one or more hidden layers and an output layer. A modified simple model of an artificial neuron is shown in Figure-1.



**Figure-1: Multi-layered Feed-forward Neural**

**The ANN Model Design:**

Following are the methodologies adopted to implement



Nelson (1991) proposed the Exponential Generalised Autoregressive Conditional Heteroscedasticity (EGARCH) model. He extended the ARCH framework in order to better describe the behaviour of return volatilities. The most important contribution was to propose a model, EGARCH, to test the hypothesis that the variance of the return was influenced directly by positive and negative excess returns.

**ANN architecture:**

- Normalization/standardization of data set into 0 to 1 scale. This method is used because the inputs Open-High-Low-Volume-Close are differing in mean and standard deviations but the number of data is in equal range. This normalization leads to at least one observed value at the 0 and 1. The simple formula used for this is:
- $$Data = \left( \frac{Actual - Minimum}{Maximum - Minimum} \right)$$
- Construction of four ANN architectures having four neurons in input layers, one neuron in the output layer and varying the number of neurons in single hidden layer from 3 to 6 (i.e., 4-6-1 to 4-3-1).
  - Training of the networks using back propagation algorithm with different learning rates (0.7 to 0.9), momentum value (0.7 to 0.9) and keeping the tolerance ratio at 0.001 as constant.
  - Learning rate coefficient ( $\varepsilon$ ) determines the size of the weight adjustments made at the end of iteration and, hence, influences the rate of convergence. In this study, the ' $\varepsilon$ ' values lies from 0.7 to 0.9.
  - The architectures have been constructed for the validation and the forecasted values of models have been observed and the errors are calculated.

**The Implementation Design**

Following are the steps adopted for implementation of the architectures:

1. The total day's data of each four series has been divided into two patterns. The first set is training pattern and the second set is validation pattern. Beside these two sets, next 10 days data is used to test the forecasting efficiency of the constructed models.
2. The return values of Open (O), High (H), Low (L), and Close (C) of previous day are inputs of day 1. The Close ( $C_n$ ) returns value of next day is Target value of day-1.
3. The training node consists of numbers of data patterns (each day is a pattern). The formation of patterns are arranged as below:

**Table-1: Training Pattern for Indices**

Days	Input				
Day-1	Target				
Day-2	$O_{t-1}$	$H_{t-1}$	$L_{t-1}$	$C_{t-1}$	$Cn_t$
Day-3	$O_t$	$H_t$	$L_t$	$C_t$	$Cn_{t+1}$



Day-4	O <sub>t-1</sub>	H <sub>t-1</sub>	L <sub>t-1</sub>	C <sub>t-1</sub>	Cn <sub>t-2</sub>
:	:	:	:	:	:
Day-960	O <sub>t+959</sub>	H <sub>t+959</sub>	L <sub>t+959</sub>	C <sub>t+959</sub>	Cn <sub>t+960</sub>

4. Data of the next day where the training pattern completed consists of first validation pattern and the validation pattern ends with respective data nodes. The below derived table-2 explains the validation pattern formulated for all the four indices as follows:

**Table-2: Validation Pattern for Indices**

Days	Input				Target
Day-961	O <sub>961</sub>	H <sub>961</sub>	L <sub>961</sub>	C <sub>961</sub>	C <sub>962</sub>
:	:	:	:	:	:
Day-1292	O <sub>1291</sub>	H <sub>1291</sub>	L <sub>1291</sub>	C <sub>1291</sub>	C <sub>1292</sub>

5. After validation, 10 days further data are forecasted. These constitute the desired output of our research. It is called as 'Forecasted value'.  
 6. The same 10 days of data has been calculated. This set is called as 'Actual Value'.  
 7. The output with the target or desired outputs are compared with actual output. The errors are calculated by using six forecasting error measures.

**Valuation of the Models:**

All the six measures considered are calculated by using the following formulas:

Mean Error (ME): $ME = \frac{1}{h} \sum_{t=1}^h (\hat{\sigma}_t - \sigma_t)$	Mean Square Error(MSE): $MSE = \frac{1}{h+1} \sum_{t=1}^h (\hat{\sigma}_t^2 - \sigma_t^2)^2$
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Where 'h' is the number of day's forecasts and ' $\hat{\sigma}_t$ ' stands for 'forecasted value' and ' $\sigma_t$ ' for 'actual value'.

**EMPERICAL CASE ANALYSIS**

Table-3 represents the forecasting error results estimated for Crude return series by using ANN models. Among the twenty estimated models, the 3-5-1 ( $\alpha=0.7$  and  $\varepsilon=0.7$ ) model is proved to be best with minimum error value represented by both error measures estimated. Next to 3-5-1 ( $\alpha=0.7$  and  $\varepsilon=0.7$ ) model, the model 3-5-1 ( $\alpha=0.8$  and  $\varepsilon=0.9$ ) ranked second in revealing the minimum forecasting error. Moreover, between both the measures of valuation, MSE performs better with minimum forecasting error.

**Table-3: Forecasting Errors of ANN Models for Crude Oil**

ANN Models	ME	MSE
$\alpha=0.9, \varepsilon=0.9; 3-6-1$	0.00113	0.000091
$\alpha=0.9, \varepsilon=0.9; 3-5-1$	0.00076	0.001002
$\alpha=0.9, \varepsilon=0.9; 3-4-1$	0.00068	0.000085
$\alpha=0.9, \varepsilon=0.9; 3-3-1$	0.00147	0.000010
$\alpha=0.8, \varepsilon=0.8; 3-6-1$	0.00089	0.000024
$\alpha=0.8, \varepsilon=0.8; 3-5-1$	0.00091	0.000011
$\alpha=0.8, \varepsilon=0.8; 3-4-1$	0.00662	0.000156
$\alpha=0.8, \varepsilon=0.8; 3-3-1$	0.00478	0.000241
$\alpha=0.9, \varepsilon=0.8; 3-6-1$	0.00081	0.000013
$\alpha=0.9, \varepsilon=0.8; 3-5-1$	0.00135	0.000035
$\alpha=0.9, \varepsilon=0.8; 3-4-1$	0.00199	0.000111
$\alpha=0.9, \varepsilon=0.8; 3-3-1$	0.01458	0.002003
$\alpha=0.7, \varepsilon=0.7; 3-6-1$	0.00076	0.000021

$\alpha=0.7, \varepsilon=0.7; 3-5-1$	<b>0.00036</b>	<b>0.000001</b>
$\alpha=0.7, \varepsilon=0.7; 3-4-1$	0.00192	0.000201
$\alpha=0.7, \varepsilon=0.7; 3-3-1$	0.00256	0.003117
$\alpha=0.8, \varepsilon=0.9; 3-6-1$	0.00188	0.000051
$\alpha=0.8, \varepsilon=0.9; 3-5-1$	0.00039	0.000007
$\alpha=0.8, \varepsilon=0.9; 3-4-1$	0.00664	0.007211
$\alpha=0.8, \varepsilon=0.9; 3-3-1$	0.00701	0.000122

- Note: 1. Calculated value.  
 2. Bold values are minimum error values.

**CONCLUSIONS**

This valuation approach could prove to be an effective approach for predicting any financial indices more particularly stock market indices. The less the error value, the more accurate that technique would be. Hence, ANN technique could prove to be more useful while estimating the value of a stock. More and more such techniques could be developed and used as an empirical case study with various stock data so that an appropriate valuation model could be recommended to each specific stock index. CS

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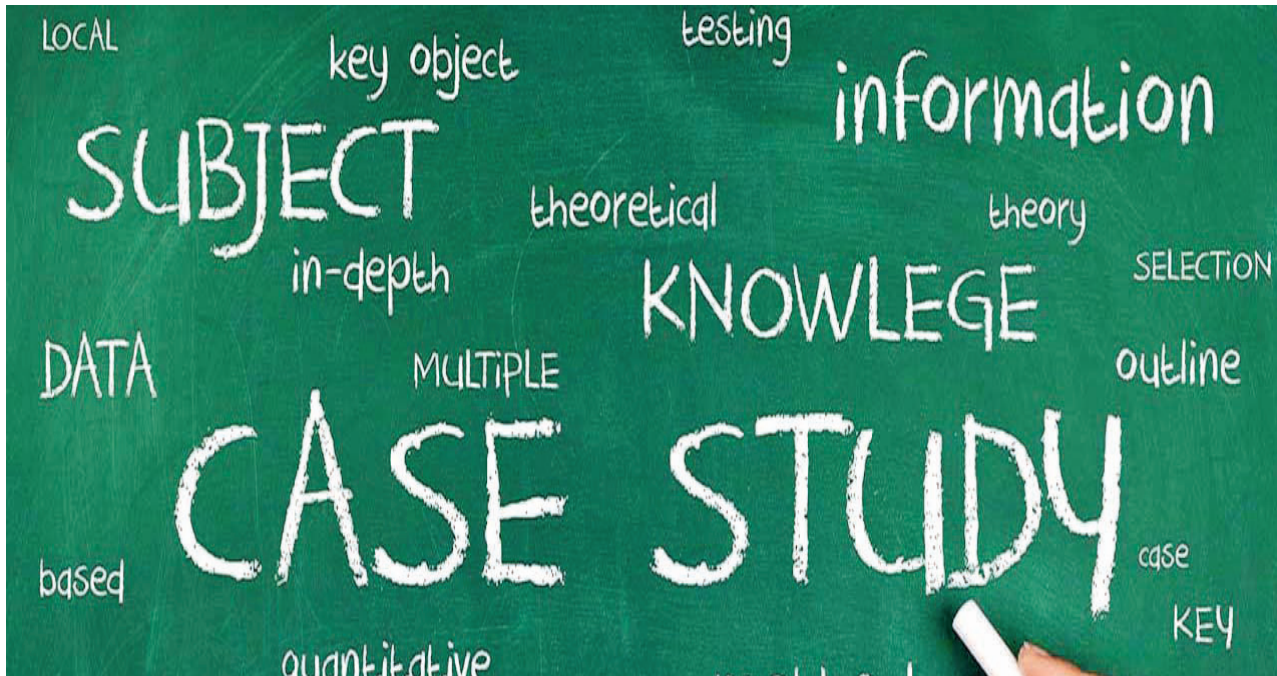
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### Objectives:

Case studies are the method of exploring and analyzing the life of a unit, be it a person, a family, an institution and any specific subject. These are particularly useful in depicting a holistic portrayal of individual's experiences and results regarding a specific study. These can also be used to organize a wide range of information about a specific content and then analyze the happenings. It also facilitates further analysis through cross comparison with other similar instances available in the research literature. It is more an in-depth analysis and comparison that the researcher wants to examine.

### Framework:

The experts have to keep in view following characteristics while designing a case:

- Comprehensive study of the subject where all the related aspects are to be studied deeply and thoroughly
- It should deal what and why aspects of the problem identified
- The subject under study should be considered as a unified whole

### Coverage

The experts should contribute case(s) on the following specified subject areas:

1. Corporate Laws including Company Law
2. Securities Laws
3. FEMA and other Economic and Business Legislations
4. Insolvency Law
5. Competition Law
6. Business Strategy and Management
7. Interpretation of Law
8. Governance Issues.

### Case Paper Guidelines

- \* Original cases on any of the above areas specified are invited
- \* The paper must be accompanied with the author's name(s), affiliations(s), full postal address, email ID, and telephone/ fax number along with the title of the paper on the front page and membership details of professional bodies, if any.
- \* Full text of the paper should be submitted in MS Word using Times New Roman, font size 12 on A4 size paper in 1.5 spacing, without any maximum limit of words.
- \* The text should be typed in MS-Word.
- \* Participants should email their correspondence on the following email id: prasant.sarangi@icsi.edu latest by 05.07.2018.
- \* There is no restriction on number of cases. One participant can submit more than one case in specified subjects.

### Further Information for Authors / Participants

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# 3

## LEGAL WORLD



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- C.I.T., CENTRAL-III, NEW DELHI v. HCL TECHNOLOGIES LTD. [SC]
- DTC SECURITY STAFF UNION (REGD.) v. DTC & ANR [SC]
- CHENNAI PORT TRUST v. THE CHENNAI PORT TRUST INDUSTRIAL EMPLOYEES CANTEEN WORKERS WELFARE ASSOCIATION & ORS. [SC]
- ORIENTAL INSURANCE COMPANY LTD v. NARBHERAM POWER & STEEL PVT LTD [SC]
- SHIV SINGH v. STATE OF HIMACHAL PRADESH & ORS [SC]



## Corporate Laws

LMJ: 06:06:2018

THE COMMISSIONER OF INCOME TAX v. CITY MILLS DISTRIBUTORS (P) LTD [SC]

Tax Reference Case No.11 of 1982

J.S.Verma, S.P.Bharucha & Sujata V Manohar, JJ. [Decided on 05/02/1996]

Equivalent citations: 1996 SCC (2) 375; JT 1996 (3) 15; (1996) 86 Comp Cas 546; 1996 SCALE (1)674.

Companies Act, 1956- incorporation of company- pre-incorporation transactions carried out by promoters- when a company comes to exist as a juristic person- Supreme Court settles the issue.

### Brief facts:

Though this is a tax reference case under the Income Tax Act, 1961, with reference to the taxability of a company's pre-incorporation transactions, yet the crucial question involved was when a company does come into existence so as to be considered as a juristic person.

The Income Tax Officer assessed the-assessee Company's total income by including, *inter alia*, the company's pre-incorporation profit. He found that the promoters of the assessee company had carried on business on its behalf and had received the sum of Rs.80,534/- for the period 1st October to 29th October, 1972. After deducting expenses, the income in this behalf was Rs.24,862/-. According to the ITO, this was the income of the assessee company because its promoters had acted and carried on business on its behalf and the assessee company had accepted the act of the promoters after its incorporation.

The assessee company's appeal to the Commissioner of Income Tax (Appeals) was dismissed. The assessee company then appealed to the Tribunal. The Tribunal held that, in law, the promoters and the assessee company were different legal persons and that the income which had accrued on 29th October, 1972, was income that was earned by the promoters. Accordingly, the appeal of the assessee company was allowed.

**Decision:** Appeal dismissed.

### Reason:

In our view, the Tribunal was right in saying that the relevant question was: what was the legal entity that had carried on the business before the assessee company was incorporated and earned the income at the time of its accrual. A Company becomes a legal entity in the eye of the law only when it is

incorporated. Prior to its incorporation, it simply does not exist. The assessee company did not exist when the income with which we are here concerned was earned. It is, therefore, not the assessee company which earned the income when it accrued and it is not liable to pay tax thereon.

The same result is reached by a somewhat different process of reasoning. A company can enter into an agreement only after its incorporation. It is only after incorporation that a company may decide to accept that its promoters have carried on business on its behalf and appropriate the income thereof to itself. The question as to who is liable to pay tax on such income cannot depend upon whether or not the company after incorporation so decides. It is he who carried on the business and received the income when it accrued who is liable to bear the burden of tax thereon.

It may be that the transaction of appropriation by a company to itself of income earned by its promoters before its incorporation is also subject to tax; that is not in issue before us and we do not express any view in that behalf. For the reasons afore stated, we answer the question in the affirmative and in favour of the assessee.



## Competition Laws

LW 40:06:2018

INDIA GLYCOLS LTD v. INDIAN SUGAR MILLS ASSOCIATION & ORS [CCI]

Case No. 94 of 2014

D.K.Sikri, Augustine Peter, U.C. Nahta, G. P. Mittal. [Decided on 11/05/2018]

Competition Act, 2002- Section 3- anti competition practices- complaint with respect to supply of ethanol at an artificially higher price – CCI dismissed the complaint.

### Brief facts:

The present information has been filed by India Glycols Ltd. ('the Informant') against Indian Sugar Mills Association ('Opposite Party-1'/ OP-1/ ISMA), National Federation of Cooperative Sugar Factories Ltd. ('Opposite Party-2'/ OP-2/ NFCSF), Indian Oil Corporation Ltd. ('Opposite Party-3'/ OP-3/ IOCL), Hindustan Petroleum Corporation Ltd. ('Opposite Party-4'/ OP-4/ HPCL) and Bharat Petroleum Corporation Ltd. ('Opposite Party-5'/ OP-5/ BPCL) (collectively, 'the OPs') alleging contravention of the provisions of the Act.

As per the Informant, OP-1 and OP-2 hold the entire market for



sugar mills in India and supply ethanol to chemical industries and to OP-3 to OP-5. It has been alleged that OP-1 is forcing the PSU OMCs to purchase ethanol at an artificially higher price and the same amounts to violation of Section 4 of the Act. It has also been alleged that the role of OP-2 is equally anti-competitive since it has colluded with OP-1 in artificially raising the price of ethanol in contravention of the provisions of Section 3 (3) (a) of the Act.

The Informant is also aggrieved at the mandatory Ethanol Blending Programme (EBP) promulgated by the Ministry of Petroleum and Natural Gas ('MoPNG') vide its notification dated 02.01.2013 whereby the OMCs were directed to sell only petrol blended with ethanol with percentage of ethanol upto 10%. It is alleged that such a programme has created anti-competitive conditions in the market for supply of ethanol by encouraging members of OP-1 and OP-2 to rig bids and to artificially increase the prices of ethanol. Thus, while seeking discontinuance of such a programme, the Informant has sought that joint tender mechanism of PSU OMCs be scrapped and the same be replaced by independent tendering by all the OMCs including private OMCs for procurement of ethanol at market-driven prices so that proper competition amongst all the OMCs is ensured and the Informant and other buyers of ethanol are also benefited by fair competition in the market for sale and purchase of ethanol.

**Decision: Complaint dismissed.**

### Reason:

**Issue No.I:** Whether the process of mandatory EBP notified by MoPNG as well as procurement of ethanol by the OMCs at fixed notified prices contravene any provision of the Act?

It needs no emphasis that a policy or pricing strategy of the Government cannot be examined in abstract by the Commission unless the same falls within the framework of the Act. The Commission observes that policy formulation is the prerogative of the Government. It is in its domain to effect a change in the extant policy by shifting the focus or changing the economic policies. No doubt, such changes could result in adversely affecting some of the existing interests, yet the same cannot be a ground to challenge them before the Commission. It is not for the Commission to consider the relative merits of different economic policies or the pricing mechanisms of the Government and decide as to whether a more wise or a better alternative can be evolved. The Commission is of the considered opinion that formulation of policies falls in the domain of the Executive and the Commission is not the appropriate forum to sit in appeal over such decisions unless such policies contravene any provision of the Act and can be examined within the existing regulatory framework.

**Issue No.II:** Whether OP-1 has abused its dominant position in the market for supply of ethanol to the PSU OMCs in violation of the provisions of Section 4 of the Act?

The primary activities of ISMA are to provide a platform to its constituent members to discuss matters of common interest relating to the sugar industry besides making representations to the government authorities and agencies to espouse the cause of its members in respect of the matters of policy and

procedures governing the sugar industry. Since ISMA is not undertaking any activity which is economic or commercial activity pertaining to production and supply of ethanol, allegations made by the Informant in this regard do not survive. As a result, question of ISMA being dominant in such a market does not arise. The argument of the Informant that ISMA is involved in business of 'provision of services' to its members to bring it within the scope of 'enterprise' is disingenuous. It needs no further analysis as the allegations made by the Informant are in respect of production and supply of ethanol and not in respect of the alleged services provided by ISMA to its members. It would indeed be a subversion of law if ISMA is held to be an 'enterprise' for providing its platform to the members as 'services' and to hold it guilty for altogether different activity i.e. production and supply of ethanol.

In view of the above, the Commission is of the considered opinion that ISMA cannot be considered to be an 'enterprise' within the meaning of the term as defined in Section 2 (h) of the Act and as such, the issue of abuse of dominant position by ISMA in respect of production and supply of ethanol does not arise.

**Issue No.III:** Whether OP-1 and OP-2 acted in collusion to create an artificial scarcity of ethanol by limiting production and supply of ethanol to force the PSU OMCs to purchase ethanol at an artificially higher price in contravention of the provisions of Section 3 of the Act?

When the DG examined the production and supply data of the three main sugar mills which produce and supply about 75-80% of the total ethanol supplied to the OMCs in State of U.P., the same revealed that the production and utilisation pattern of these mills of different derivatives of alcohol during financial years 2012-13 to 2014-15 significantly differ. It indicates that the sugar mills are independently taking decisions on their production mix and its utilisation including ethanol and such decisions seem to be market driven. It seems that these sugar mills are producing and supplying different derivatives of alcohol as per the demand and supply commitments made by each one of them looking to the market forces.

Further, the DG also alluded to several reports and studies undertaken by various government agencies and organizations working on policy matters, which seemed to unanimously indicate that production and supply of ethanol for EBP is at a lower level which is due to the fact that production of sugarcane in the country is inconsistent. Therefore, supply of molasses in the country is also not only inconsistent but limited too. Under such a scenario, it will be logical and prudent to compare and see the production and supply of ethanol in connection with the production and availability of molasses. In the light of these facts and analysis, the investigation came to the conclusion that the production, availability and supply of molasses in the country has a huge and decisive impact on the production and supply of ethanol and that OP-1 and OP-2 cannot be said to be in any collusion to create an artificial scarcity of ethanol by limiting production and supply of ethanol at low level which may force the OMCs (OP-3 to OP-5) to purchase ethanol at an artificially higher price.

For the reasons adumbrated, the Commission is of the opinion

that no contravention of the provisions of Section 3 (3) (a) and 3 (3) (b) of the Act is made out against ISMA (OP-1) and NFCFS (OP-2).

In view of the above, the Commission is of the opinion that no case of contravention of the provisions of the Act is made out against OP-3 to OP-5 on the aforesaid count. Based on the above discussion, the Commission is of the opinion that no case of contravention of the provisions of the Act is made out against the OPs.

## LW 41:06:2018

In Re: ANTI-COMPETITIVE PRACTICES PREVAILING IN BANKING SECTOR [CCI]

Suo Motu Case No. 01 of 2015

D.K.Sikri, U.C. Nahta & G. P. Mittal. [Decided on 24/04/2018]

Competition Act, 2002- allegation of cartelisation by banks- savings bank interest rates and service charges- CCI concludes that there is no cartelisation.

### Brief facts:

The instant matter concerns Savings Bank Interest Rates ('SBIRs') and service charges on Automated Teller Machines ('ATMs') transactions, offered/ charged by banks. Considering the similarity of these rates across different banks, the Commission took up the matter on a suo moto basis.

**Decision:** No cartelisation in banking services.

### Reason:

At the outset, it is observed that out of the Sample Banks, BOB, BOI, CB and Axis did not discuss SBIRs in any of their meetings. ALCOs of the other Sample Banks viz. SBI, ICICI, HDFC, PNB, UBI and CBI had discussion regarding SBIRs but for different reasons chose not to change the SBIRs. Soon after deregulation, CBI was the first bank to discuss the issue of SBIR in its meeting dated 28th October, 2011. From the minutes of its ALCO meeting, it is seen that CBI considered the impact of an increase of fifty basis points (bps) i.e. half a percent in SBIR on the cost of funds and estimated a rise to result in increased cost by more than seven percent, which would have to be recovered from the borrowers of retail loans. Therefore, CBI deliberately decided not to enhance the SBIR. PNB considered SBIR in its meeting dated 29th October, 2011 and decided not to enhance the same as no other major bank did so. PNB also believed that SB Accounts were more influenced by customer service and were not sensitive to interest rate to a large extent. Similarly, SBI in its meeting held on 3rd December, 2011 took note of certain smaller banks increasing SBIR but no impact on the growth of SB deposits in SBI was felt. Therefore, it decided to maintain the same SBIR i.e. four (4) percent. In its meeting held on 31st October, 2011, ICICI noted that unlike smaller banks, increase in SBIR by one hundred bps would have a significantly negative impact on the net interest income and therefore, it decided not to increase the SBIR. The in-depth investigation by the DG did not reveal any incriminating material suggesting cartel amongst the

banks. Thus, the Commission is of the view that SBIRs offered by the banks are an outcome of their independent assessment of market conditions and not of any collusive arrangement.

On the issue of similarity in service charges, it is noted that rates of SCBs for different types of services varied significantly. The studies of BCSBI, which covered public, private and foreign banks, suggest that there was no similarity in charges levied by different banks for various services like account maintenance, account closure, issue and cancellation of DDs, POs, BCs, ATM transactions, SMS alerts etc. They also reveal that very few SCBs conducted costing exercise, in addition to considering the charges levied by peer banks, for imposing/ revising service charges. As similarity of service charges across banks is not observed, Commission is of the view that there has not been any collusion amongst the SCBs for determining service charges as well.

As regards role of the IBA, investigation could not bring forth any material indicating use of its platform to decide or implement similar SBIRs by banks. This is further reinforced by the fact that private SCBs such as Yes Bank, Kotak, IndusInd Bank are offering higher SBIRs despite being members of IBA. Even on the recommendation of BCSBI to IBA for issuance of guidelines on certain service charges, IBA took the stance that it will not prescribe any standard service charges and the same should be determined by individual banks having due regard to their costs and other relevant factors. Thus, it is difficult to draw an inference that IBA was used as a platform or was instrumental in determining similar SBIRs or coordinating service charges.

In view of the foregoing, Commission is of the view that there is no reason to disagree with the findings of the DG as the material on record does not suggest any cartelisation amongst banks and/or IBA, during 2011 to 2016, to determine SBIRs or service charges. Accordingly, no case of contravention of the provisions of Section 3(3) of the Act is made out.



## LW 42:06:2018

COMMISSIONER OF CENTRAL EXCISE, INDORE v. GRASIM INDUSTRIES LTD [SC]

Civil Appeal No.3159 of 2004 with batch of appeals

Ranjan Gogoi, M M Shantanagoudar, R Banumathi, N Ramana & S. Abdul Nazeer, JJ. [Decided on 11/05/2018]

Central Excise Act, 1944 - Sections 3 and 4-valuation- other charges charged to customers under various heads-whether forms part for the

determination of transaction value-Held, Yes.

### Brief facts:

The respondent – Assessee are manufacturers of dissolved and compressed industrial gases, liquid chlorine and other allied products. Cotton yarn and Post Mix Concentrate manufactured by two other individual assessee are also in issue. These articles are supplied to the customers in tonners, cylinders, carboys, paper cones and HDPE bags, BIBs, pipeline and canisters, which may be more conveniently referred to as “containers”. In some cases the containers are provided by the Assessee to the customers on rent whereas in others the customers bring their own containers. For making available or for filling up the containers provided by the customers the Assessee charge the customers certain amounts under different heads viz. packing charges, wear and tear charges, facility charges, service charges, delivery and collection charges, rental charges, repair and testing charges. The Assessee treat the said amounts as their income from ancillary or allied ventures.

The issue arising is whether the aforesaid charges realised by the Assessee are liable to be taken into account for determination of value for the purpose of levy of duty in terms of Section 4 of the Central Excise Act, 1944 (hereinafter referred to as “the Act”) as amended with effect from 1st July, 2000.

Perceiving a conflict between the two decisions of this court in *Union of India & Ors. v. Bombay Tyre International Ltd & Ors.* (1984) 1 SCC 467 and *Commissioner of Central Excise, Pondicherry v. Acer India Ltd.* (2004) 8 SCC 173, a two judge Bench of this Court referred the following questions for an answer by a larger bench:

1. Whether Section 4 of the Central Excise Act, 1944 (as substituted with effect from 1-7-2000) and the definition of “transaction value” in clause (d) of sub-section (3) of Section 4 are subject to Section 3 of the Act?
2. Whether Sections 3 and 4 of the Central Excise Act, despite being interlinked, operate in different fields and what is their real scope and ambit?
3. Whether the concept of “transaction value” makes any material departure from the deemed normal price concept of the erstwhile Section 4(1) (a) of the Act?

### Decision & Reason:

At this stage, the amendment to Section 3 by substitution of the words “a duty of excise on all excisable goods” by the words “a duty of excise to be called the Central Value Added Tax (CENVAT) on all excisable goods” is conspicuous. The amendment of Section 3 to the Act not only incorporates the essentials of a changed concept of charging of tax on additions to the value of goods and services at each stage of production but also engrafts in the statute what was judicially held to be permissible additions to the manufacturing cost and manufacturing profit in *Bombay Tyre International Ltd.* (supra). This fundamental change by introduction of the concept underlying value-added taxation in the provisions of Section 3 really find reflection in the definition of ‘transaction value’ as defined by Section 4(3)(d) of the Act besides incorporating what was explicitly held to be permissible in *Bombay Tyre International Ltd.* (supra). Section 4(3)(d), thus, defines ‘transaction value’ by specifically including all value additions

made to the manufactured article prior to its clearance, as permissible additions to be price charged for purpose of the levy.

This would bring us to a consideration of the decision of this Court in *Acer India Ltd* (supra). The details need not detain us. Softwares which were duty free items and could be transacted as softwares came to be combined with the computer hardware which was a dutiable item for purposes of clearance. The Revenue sought to take into account the value of the computer software for the purposes of determination of ‘transaction value’ with regard to the computer. This Court negated the stand of the Revenue taking the view that when software as a separate item was not dutiable its inclusion in the hard-disk of the computer cannot alter the duty liability of the software so as to permit the addition of the price/value of the software for the purpose of levy of duty. It is in the above context that the decision of this Court in *Acer India Ltd.* (supra) has to be understood. The observations made in paragraph 84 thereof to the effect that ‘transaction value’ defined in Section 4(3) (d) of the Act would be subject to the charging provisions contained in Section 3 of the Act will have viewed in the context of a situation where an addition of the value of a non-dutiable item was sought to be made to the value of a dutiable item for the purpose of determination of the transaction value of the composite item. This is the limited context in which the subservience of Section 4(3) (d) to Section 3 of the Act was expressed and has to be understood. If so understood, we do not see how the views expressed in paragraph 84 of *Acer India Ltd.* (supra) can be read to be in conflict with the decision of *Bombay Tyre International Ltd.* (supra).

Accordingly, we answer the reference by holding that the measure of the levy contemplated in Section 4 of the Act will not be controlled by the nature of the levy. So long a reasonable nexus is discernible between the measure and the nature of the levy both Section 3 and 4 would operate in their respective fields as indicated above. The view expressed in *Bombay Tyre International* (supra) is the correct exposition of the law in this regard. Further, we hold that “transaction value” as defined in Section 4(3) (d) brought into force by the Amendment Act, 2000, statutorily engrafts the additions to the ‘normal price’ under the old Section 4 as held to be permissible in *Bombay Tyre International Ltd.* (supra) besides giving effect to the changed description of the levy of excise introduced in Section 3 of the Act by the Amendment of 2000. In fact, we are of the view that there is no discernible difference in the statutory concept of ‘transaction value’ and the judicially evolved meaning of ‘normal price’.

The above answers would comprehend the issues specifically arising in all the three questions that have been referred for our opinion.

LW 43:06:2018

C.I.T., CENTRAL-III, NEW DELHI v. HCL TECHNOLOGIES LTD. [SC]

Civil Appeal Nos. 8489-8490 of 2013 with batch of appeals

R.K. Agrawal & R.Banumathi, JJ. [Decided on 24/04/2018]



Income TAX Act, 1961- Section 10A- calculation of export turnover- software development charges – whether deductible for the purpose of claiming deduction- Held, Yes.

### Brief facts:

The only point for consideration before the Court, in the instant case, was whether in the facts and circumstances of the case, the software development charges are to be excluded while working out the deduction admissible under Section 10A of the IT Act on the ground that such charges are relatable towards expenses incurred on providing technical services outside India?

**Decision:** Appeal dismissed.

### Reason:

The similar nature of controversy, akin this case, arose before the Karnataka High Court in CIT v. Tata Elxsi Ltd. (2012) 204 Taxman 321. The issue before the Karnataka High Court was whether the Tribunal was correct in holding that while computing relief under Section 10A of the IT Act, the amount of communication expenses should be excluded from the total turnover if the same are reduced from the export turnover? While giving the answer to the issue, the High Court, *inter-alia*, held that when a particular word is not defined by the legislature and an ordinary meaning is to be attributed to it, the said ordinary meaning is to be in conformity with the context in which it is used. Hence, what is excluded from 'export turnover' must also be excluded from 'total turnover', since one of the components of 'total turnover' is export turnover. Any other interpretation would run counter to the legislative intent and would be impermissible.

In the instant case, if the deductions on freight, telecommunication and insurance attributable to the delivery of computer software under Section 10A of the IT Act are allowed only in Export Turnover but not from the Total Turnover then, it would give rise to inadvertent, unlawful, meaningless and illogical result which would cause grave injustice to the Respondent which could have never been the intention of the legislature.

Even in common parlance, when the object of the formula is to arrive at the profit from export business, expenses excluded from export turnover have to be excluded from total turnover also. Otherwise, any other interpretation makes the formula unworkable and absurd. Hence, we are satisfied that such deduction shall be allowed from the total turnover in same proportion as well.

On the issue of expenses on technical services provided outside, we have to follow the same principle of interpretation as followed in the case of expenses of freight, telecommunication etc., otherwise the formula of calculation would be futile. Hence, in the same way, expenses incurred in foreign exchange for providing the technical services outside shall be allowed to exclude from the total turnover.

In view of above discussion, we are of the considered view that these instant appeals are devoid of merits and deserve to be dismissed. Accordingly, all the connected matters and interlocutory applications, if any, are disposed of with no order as to costs.



## Industrial & Labour Laws

LW 44:06:2018

DTC SECURITY STAFF UNION (REGD.) v. DTC & ANR [SC]

Civil Appeal No.5005 of 2018 (Arising out of SLP(C) No.8039 of 2016)

Ranjan Gogoi, R.Banumathi & Navin Sinha, JJ. [Decided on 11/05/2018]

Industrial Disputes Act, 1947- public transport corporation- pay scale of security staff- should be at par with Delhi police force- Held, No.

### Brief facts:

The Appellant sought a Reference on 24.10.1979, under the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') with regard to revision of pay scale of Security Staff up to the rank of Assistant Security Inspector, in the Delhi Transport Corporation (hereinafter referred to as 'the Corporation'). The Industrial Tribunal, by Award dated 22.08.1985 held that Assistant Security Officer, Security Havaldar and Security Guard in the services of the Corporation were entitled to the pay scale of Rs.425-700/-, Rs.260-350/ and Rs.225-308/- respectively, with effect from 01.10.1979, at par with their counterparts in the Delhi Police Force. The Corporation challenged the Award unsuccessfully before the Single Judge. The Division Bench set aside the Award, and which is presently assailed.

**Decision:** Appeal dismissed.

### Reason:

We have considered the submissions. There is no material to hold that pay scale of Deputy Security Officer and Security Officer in the Corporation was consciously kept at par with that of the Delhi Police keeping in mind aspects with regard to the qualifications, nature of duties etc. Merely because the pay scale may have been and remained the same, it cannot lead to the conclusion of a conscious parity on the principle of equal pay for equal work so as to make it discriminatory and a ground for grant of parity to Assistant Security Officer, Security Havaldar and Security Guard also. The Tribunal ought to have refrained from going to the exercise of fixation of pay scales no sooner than that it was brought to its attention that a Commission constituted for the purpose was examining the same. Though the Tribunal examined the pay scales given to similarly situated security personnel in other organisations, and also the next below post principle in the Corporation itself, ignoring the difference in the methods of recruitment and qualifications for appointment in the two organisations, it primarily based its conclusion to grant parity of pay scale to Assistant Security Officer, Security Havaldar and Security Guard merely for the reason that parity of pay scale existed for the posts of Deputy Security Officer and

Security Officer with that of the Delhi Police.

It is not in dispute that the pay→ scale of the employees of the corporation, including the security cadre, have been revised from time to time in accordance with the recommendations of 4th, 5th, 6th Pay Commission and now the 7th Pay Commission. There is no material on record that the appellant at any time filed any objection or raised issues for grant of appropriate pay scale either before the 4th Pay→ Commission or the successive Commissions. If the award of the Tribunal is to be implemented today, it will create a highly anomalous position in the Corporation, and c=shall lead to serious complications with regard to the issues of pay→ scale vis→a→vis recommendations of the Pay →Commission and would generate further heartburn and related problems vis→à→vis other employees of the Corporation.

The Government of Delhi, which would have had to bear the financial burden, did not concur with the Board of the Corporation to abide by the e by the Award. The vast difference in the nature of general duties performed by personnel of the police force in contradistinction to that of security personnel discharging limited security duties in the confines of the Corporation hardly needs any emphasis. We find no reason to interfere with the order of the Division Bench.

## LW 45:06:2018

CHENNAI PORT TRUST v. THE CHENNAI PORT TRUST INDUSTRIAL EMPLOYEES CANTEEN WORKERS WELFARE ASSOCIATION & ORS. [SC]

Civil Appeal No.1381 of 2010

A.M.Sapre & R. K. Agrawal, JJ. [Decided on 27/04/2018]

Industrial Disputes Act, 1947 - demand for regularisation of canteen employees- whether allowable- Held, Yes.

### Brief facts:

The appellant has been in existence for the last many decades and has a large administrative and technical set up to run their multifarious activities on the Port. Large numbers of workers/ employees are employed by the Port Trust who work round the clock in shifts to run and maintain the activities of the Port Trust. These Port Trust workers/employees are provided with the facility of canteen. This canteen has employed a large number of employees to run the canteen. The employees working in the canteen have formed an Association known as “Chennai Port Trust Industrial Employees Canteen Workers Welfare Association” (for short called “Association”)-respondent No.1 herein.

The Association-respondent No.1 herein filed a writ petition being W.P. No.6872 of 2001 in the High Court at Madras against the appellant herein (Chennai Port Trust) espousing the cause of their members (employees working in the Canteen) and sought a writ of mandamus against the appellant - Chennai Port Trust (respondent No.3 in the writ petition) directing the appellant to treat the employees working in the Canteen to be the regular employees of the Chennai Port Trust and accordingly pay them all attendant and monetary benefits at par with the regular employees of the Chennai Port Trust.

The Writ Court (Single Judge) allowed the writ petition filed by the Association (respondent No.1 herein) and accordingly issued a writ of mandamus against the appellant (Chennai Port Trust), as prayed by the writ petitioner in their writ petition. In other words, the writ Court granted the reliefs claimed by the writ petitioner in their writ petition [regularisation].

The appellant filed intra court appeal before the Division Bench, which by impugned judgment, dismissed the appeal and upheld the order of the Single Judge, which has given rise to filing of the present appeal.

**Decision:** Appeal Dismissed.

### Reason:

Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in the appeal.

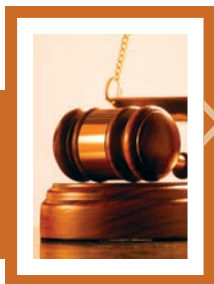
In our considered view, the Writ Court (Single Judge) and the Division Bench were right in their reasoning and the conclusion. The Division Bench, in our opinion, rightly relied upon the decision of this Court in *Indian Petrochemicals Corporation Ltd. & Anr. vs Shramik Sena & Ors* (1999) 6 SCC 439 and compared the facts of the above case with that of the case at hand and found great similarities in both for granting relief to the members of the respondent (Association).

The Division Bench in Paras 14 and 15 of the impugned judgment took note of 20 factors of this case, which were found identical to the facts involved in *Indian Petrochemical's case* (supra) wherein this Court had issued a writ of mandamus against the main employer in relation to such employees working in the canteen run for the benefit of the employer.

We find no fault in the aforementioned findings recorded by the Division Bench as, in our view, these findings were recorded on the basis of undisputed facts and documents on record of the case. That apart, these findings were recorded keeping in view the facts involved and law laid down by this Court in the case of *Indian Petrochemicals* (supra)

Mere perusal of the decision rendered in the case of *Indian Petrochemicals* (supra) would go to show that in that case also, somewhat similar question, which is the subject matter of this appeal, had arisen at the instance of the employees working in canteen. This Court (Three Judge Bench) elaborately examined the question and took note of the relevant undisputed facts, which had bearing over the question, granted the reliefs to the employees concerned.

In our considered opinion, the approach and the reasoning of the two Courts below (Writ Court and Division Bench) while deciding the writ petition and the appeal arising out of the writ petition keeping in view the law laid down by this Court in the case of *Indian Petrochemicals* (supra) is just, proper and legal. In other words, if on the undisputed facts, this Court has granted benefit to the canteen workers in the case of *Indian Petrochemicals* (supra) then there is no reason that on the same set of undisputed facts arising in this case, the Court should not grant the benefit to the employees/workers in this case. It is more so when no distinguishable facts are pointed out in this case qua *Indian Petrochemical's case* (supra).



## General Laws

LW 46:06:2018

ORIENTAL INSURANCE COMPANY LTD v. NARBHERAM POWER & STEEL PVT LTD [SC]

Civil Appeal No. 2268 of 2018 arising out of S.L.P. (C) No. 33621 of 2017)

Dipak Misra (CJ), A.M. Khanwilkar & D.Y. Chandrachud, JJ. [Decided on 02/05/2018]

Arbitration and Conciliation Act, 1996- insurance policy- clause stipulating disputed claim would not be referred to arbitration- insurer repudiating the claim- whether referable to arbitration- Held, No.

### Brief facts:

The respondent had entered into a Fire Industrial all Risk Policy in respect of the factory situated in Orissa. In October 2013, due to cyclone the respondent suffered damages which it estimated at about 4 crores. An intimation was given to the appellant-insurer and it appointed a surveyor which visited the factory premises. A series of correspondences were exchanged between the respondent and the insurer. As ultimately the claim was not settled, the respondent sent a communication intimating the appellant that it had invoked the arbitration agreement and requested it to concur with the name of the arbitrator whom it had nominated. The appellant replied to the said letter repudiating the claim made by the respondent and declined to refer the disputes to arbitration between the parties.

The respondent moved an application before the High Court for the appointment of an arbitrator, which was contested by the appellant insurer and the High Court appointed a retired Judge of the High Court as arbitrator. The said order is under assail by way of special leave in this appeal.

**Decision:** Appeal allowed.

### Reason:

When we carefully read the Clause 13, it is quite limpid that once the insurer disputes the liability under or in respect of the policy, there can be no reference to the arbitrator. It is contained in the second part of the Clause. The third part of the Clause stipulates that before any right of action or suit upon the policy is taken recourse to, prior award of the arbitrator/arbitrators with regard to the amount of loss or damage is a condition precedent. The High Court, as the impugned order would show, has laid emphasis on the second part and, on that basis, opined that the second part and third part do not have harmony and, in fact, sound a discordant note, for the scheme cannot be split into two parts, one to be decided by the arbitration and the other in the suit.

It does not need special emphasis that an arbitration clause is required

to be strictly construed. Any expression in the clause must unequivocally express the intent of arbitration. It can also lay the postulate in which situations the arbitration clause cannot be given effect to. If a clause stipulates that under certain circumstances there can be no arbitration, and they are demonstrably clear then the controversy pertaining to the appointment of arbitrator has to be put to rest.

In the instant case, Clause 13 categorically lays the postulate that if the insurer has disputed or not accepted the liability, no difference or dispute shall be referred to arbitration. The thrust of the matter is whether the insurer has disputed or not accepted the liability under or in respect of the policy. The rejection of the claim of the respondent made vide letter dated 26.12.2014 ascribing reasons, submits the learned senior counsel for the respondent, does not amount to denial of liability under or in respect of the policy. On a reading of the communication, we think, the disputation squarely comes within Part II of Clause 13. The said Part of the Clause clearly spells out that the parties have agreed and understood that no differences and disputes shall be preferable to arbitration if the company has disputed or not accepted the liability. The communication ascribes reasons for not accepting the claim at all. It is nothing else but denial of liability by the insurer in toto. It is not a disputation pertaining to quantum. In the present case, we are not concerned with regard to whether the policy was void or not as the same was not raised by the insurer. The insurance-company has, on facts, repudiated the claim by denying to accept the liability on the basis of the aforesaid reasons. No inference can be drawn that there is some kind of dispute with regard to quantification. It is a denial to indemnify the loss as claimed by the respondent. Such a situation, according to us, falls on all fours within the concept of denial of disputes and non-acceptance of liability. It is not one of the arbitration clauses which can be interpreted in a way that denial of a claim would itself amount to dispute and, therefore, it has to be referred to arbitration. The parties are bound by the terms and conditions agreed under the policy and the arbitration clause contained in it. It is not a case where mere allegation of fraud is leaned upon to avoid the arbitration. It is not a situation where a stand is taken that certain claims pertain to excepted matters and are, hence, not arbitrable. The language used in the second part is absolutely categorical and unequivocal inasmuch as it stipulates that it is clearly agreed and understood that no difference or disputes shall be referable to arbitration if the company has disputed or not accepted the liability. The High Court has fallen into grave error by expressing the opinion that there is incongruity between Part II and Part III. The said analysis runs counter to the principles laid down in the three-Judge Bench decision in *The Vulcan Insurance Co. Ltd* (supra). Therefore, the only remedy which the respondent can take recourse to is to institute a civil suit for mitigation of the grievances. If a civil suit is filed within two months hence, the benefit of Section 14 of the Limitation Act, 1963 will enure to its benefit. In view of the aforesaid premised reasons, the appeal is allowed and the order passed by the High Court is set aside.

LW 47:06:2018

SHIV SINGH v. STATE OF HIMACHAL PRADESH & ORS [SC]

Civil Appeal No.4414 of 2018 [Arising out of SLP (C) No.7981 of 2017] R.K. Agrawal & A. M. Sapre, JJ. [Decided on 25/04/2018]

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 – land acquisition- objections not considered- whether the award is tenable- Held, No.



## Brief facts:

The dispute in this case relates to acquisition of the land belonging to the appellants which is sought to be acquired under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "the Act").

By notification dated 08.12.2015 issued under Section 11 of the Act, the State of Himachal Pradesh sought to acquire the appellants' land measuring around 1-00-49 Hectares along with the lands of other landowners. The acquisition was for public purpose, namely, "construction of road from Bus Stand Ruhil to Upper Ruhil via Kuper". The appellants (writ petitioners) had filed their objections to the proposed acquisition on 05.01.2016 well within the time prescribed under Section 15 of the Act. Without considering the objections the collector passed the award and the High Court had confirmed the same. Hence the present appeal to the Supreme Court.

**Decision:** Appeal allowed.

## Reason:

Under the scheme of the Act, once the objections are filed by the affected landowners, the same are required to be decided by the Collector under Section 15(2) of the Act after affording an opportunity of being heard to the landowners, who submitted their objections and after making further inquiry, as the Collector may think necessary, he is required to submit his report to the appropriate Government for appropriate action in the acquisition in question.

In this case, we find that the Collector neither gave any opportunity to the appellants as contemplated under Section 15(2) of the Act and nor submitted any report as provided under Section 15(2) of the Act to the Government so as to enable the Government to take appropriate decision. In other words, we find that there is non-compliance of Section 15(2) of the Act by the Collector. In our view, it is mandatory on the part of the Collector to comply with the procedure prescribed under Section 15(2) of the Act so as to make the acquisition proceedings legal and in conformity with the provisions of the Act.

The aforementioned aspect of the case does not appear to have been taken note of by the High Court, resulting in dismissal of the appellants' writ petition requiring interference by this Court.

It is for this reason and without going into any other issue arising in the case, we are inclined to allow the appeal, set aside the impugned judgment and allow the appellants' writ petition in part.

We hereby direct the respondent No.2 herein (Collector, Winter Field, Shimla-3 HP) to decide the objections filed by the appellants on 05.01.2016 keeping in view the requirements of Section 15(2) of the Act and pass appropriate orders.

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# 4

## FROM THE GOVERNMENT



- COMPANIES (APPOINTMENT AND QUALIFICATION OF DIRECTORS) SECOND AMENDMENT RULES, 2018
- COMPANIES (AUDIT AND AUDITORS) AMENDMENT RULES, 2018
- CLARIFICATION-CONDONATION OF DELAY SCHEME, 2018 - REG.
- DATE OF COMING INTO FORCE OF CERTAIN SECTIONS OF THE COMPANIES (AMENDMENT) ACT, 2017
- COMPANIES (MEETINGS OF BOARD AND ITS POWERS) AMENDMENT RULES, 2018
- COMPANIES (REGISTRATION OF OFFICE AND FEES) SECOND AMENDMENT RULES, 2018
- COMPANIES (PROSPECTUS AND ALLOTMENT OF SECURITIES) AMENDMENT RULES, 2018
- COMPANIES (SHARE CAPITAL AND DEBENTURES) SECOND AMENDMENT RULES, 2018
- COMPANIES (SPECIFICATION OF DEFINITION DETAILS) AMENDMENT RULES 2018
- NOTIFICATION NO. G.S.R. 432 (E) - CORRIGENDUM
- CLARIFICATION WITH REGARD TO PROVISIONS UNDER SECTION 135 (5) OF THE COMPANIES ACT, 2013
- CIRCULAR FOR IMPLEMENTATION OF CERTAIN RECOMMENDATIONS OF THE COMMITTEE ON CORPORATE GOVERNANCE UNDER THE CHAIRMANSHIP OF SHRI UDAY KOTAK
- AMENDMENT TO SEBI CIRCULAR NO. IMD/FPIC/CIR/P/2018/61 DATED APRIL 5, 2018 AND CIRCULAR NO. IMD/FPIC/CIR/P/2018/74 DATED APRIL 27, 2018 ON MONITORING OF FOREIGN INVESTMENT LIMITS IN LISTED INDIAN COMPANIES
- INVESTMENT OF OWN FUNDS (EXCLUDING FUNDS LYING IN CORE SETTLEMENT GUARANTEE FUND) BY CLEARING CORPORATIONS IN INTERNATIONAL FINANCIAL SERVICES CENTRE (IFSC)
- SEGREGATED NOMINEE ACCOUNT STRUCTURE IN INTERNATIONAL FINANCIAL SERVICE CENTRE (IFSC)
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## Corporate Laws

# 01

### Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2018

[Issued by the Ministry of Corporate Affairs vide F.No. 1/22/2013-CL.V-Part-III dated 07.05.2018. Published in the Gazette of India Extraordinary, Part - II, Section - 3, Sub Section (i) vide Notification No. G.S.R. - 431 (E) dated 07.05.2018]

In exercise of the powers conferred by sections 149 and 168 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Appointment and Qualification of Directors) Rules, 2014, namely:-

- (1) These rules may be called the Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2018.  
(2) They shall come into force on the date of their publication in the official Gazette.
- In the Companies (Appointment and Qualification of Directors) Rules, 2014, rule 5 shall be numbered as sub-rule (1) thereof, and after sub-rule (1) as so numbered, the following sub-rule shall be inserted, namely:-  
“(2) None of the relatives of an independent director, for the purposes of sub-clauses (ii) and (iii) of clause (d) of sub-section (6) of section 149,-  
(i) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors; or  
(ii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for an amount of fifty lakhs rupees, at any time during the two immediately preceding financial years or during the current financial year.”
- In the principal rules, in rule 16, for the word “shall”, the word “may” shall be substituted.

**K V R MURTY**  
Joint Secretary

# 02

### Companies (Audit and Auditors) Amendment Rules, 2018

[Issued by the Ministry of Corporate Affairs vide F.No. 1/33/2013.CL- V (Part) dated 07.05.2018. Published in the Gazette of India Extraordinary, Part - II, Section - 3, Sub Section (i) vide Notification No. G.S.R. - 432 (E) dated 07.05.2018]

- In exercise of the powers conferred by sections 139, 143, 147 and 148 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Audit and Auditors) Rules, 2014, namely:-  
1. Short title and commencement.- (1) These rules may be called the Companies (Audit and Auditors) Amendment Rules, 2018.

# 92

- (2) They shall come in to force on the date of their publication in the Official Gazette.
- In the Companies (Audit and Auditors) Rules, 2014 (herein after referred to as the principal rules), in rule 3,  
(a) Explanation shall be omitted;  
(b) proviso to sub-rule (7) shall be omitted.
- In the principal rules, rule 9 shall be omitted.
- In the principal rules, in rule 10A, for the words “adequate internal financial controls system”, the words “internal financial controls with reference to financial statements” shall be substituted.
- In the principal rules, in rule 14,-  
(a) in clause (a), in sub-clause (i), for the words, “who is a cost accountant in practice”, the words “who is a cost accountant” shall be substituted;  
(b) in clause (b) for the words ‘who is a cost accountant in practice’, the words “who is a cost accountant” shall be substituted.

**K V R MURTY**  
Joint Secretary

# 03

### Clarification-Condonation of Delay Scheme, 2018 - reg.

[Issued by the Ministry of Corporate Affairs vide General Circular No. 05/2018 dated 17.05.2018]

- In continuation of General Circular No. 16/2017 dated 29.12.2017, General Circular No. 02/2018 dated 28.03.2018 and General Circular No. 03/2018 dated 27.04.2018 on the subject cited above, it is stated that this Ministry has received representations from stakeholders raising doubts regarding filing requirements of e-CODS, 2018, in such cases, where petitions have already been filed before NCLT under section 252 of the Companies Act 2013, during the currency of the scheme and orders are pending before the NCLT and whether such struck off companies can file CODS upon obtaining orders for the same even after 01.05.2018.
- The matter has been examined and it is clarified that as per para 4(v) of the General Circular No.16/2017 dt 29.12.2017, which states “In the event of defaulting companies whose names have been removed from the register of companies under Section 248 of the Act and which have filed applications for revival under Section 252 of the Act up to the date of this scheme, the Director’s DIN shall be re-activated only NCLT order of revival subject to the company having filing of all overdue documents”. It, is therefore, hereby directed that in such cases the Registrar(s) of Companies shall raise a ticket through Change Requirement Form (CRF) on MCA21 portal along with copy of NCLT order and E-governance shall activate DIN of the director of such struck off companies that have been revived through NCLT to file e-CODS 2018. However, the directors whose DINs are proposed to be activated through CRF should not be directors on any other company which has been struck off under section 248(1) of the Act (other than the one revived through NCLT order as mentioned in CRF). This may be ensured by the ROC before raising CRF with E-governance.
- Further, the Registrar(s) of Companies are directed to ensure that CRFs are raised in such cases only after thorough scrutiny of the NCLT orders and ensuring that such struck off companies had filed overdue documents before filing e-CODS, 2018 and had filed petitions before the NCLT during the validity of CODS Scheme.
- This issues with the approval of the competent authority.

**KMS NARAYANAN**  
Assistant Director (Policy)

## 04 Date of coming into force of certain sections of the Companies (Amendment) Act, 2017

[Issued by the Ministry of Corporate Affairs vide F.No. 1/1/2018- CL.I dated 07.05.2018. Published in the Gazette of India Extraordinary, Part - II, Section - 3, Sub Section (ii) vide Notification No. S.O. 1833 (E) dated 07.05.2018]

1. In exercise of the Power conferred by Sub-Section (2) of Section 1 of the Companies (Amendment) Act, 2017 (1 of 2018), the Central Government hereby appoints the 7th May, 2018 as the date on which the following provisions of the said Act shall come into force, namely:—

Sl. No.	Sections
1.	Clause (i) and clause (xiii) of section 2;
2.	Section 8;
3.	Section 13;
4.	Sections 18 and 19;
5.	Clauses (i) and (ii) of section 21;
6.	Clauses (iii) and (iv) of section 23;
7.	Section 30 and 31;
8.	Section 33;
9.	Section 39 and 40;
10.	Section 46;
11.	Section 49;
12.	Section 52;
13.	Sections 54 to 58 (both inclusive);
14.	Sections 61 and 62;
15.	First Proviso to clause (i) of section 80 and clause (ii) of section 80;
16.	Section 83;
17.	Sections 86 to 89 (both inclusive)

**K V R MURTY**  
Joint Secretary

## 05 Companies (Meetings of Board and its Powers) Amendment Rules, 2018

[Issued by the Ministry of Corporate Affairs vide F. No. 1/32/2013-CL-V-Part dated 07.05.2018. Published in the Gazette of India Extraordinary, Part - II, Section - 3, Sub Section (i) vide Notification No. G.S.R. - 429 (E) dated 07.05.2018]

In exercise of the powers conferred by sections 173, 177, 178 and section 186 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Meetings of Board and its Powers) Rules, 2014, namely:—

- (1) These rules may be called the Companies (Meetings of Board and its Powers) Amendment Rules, 2018.  
(2) They shall come into force on the date of their publication in the Official Gazette.
- In the Companies (Meetings of Board and its Powers) Rules, 2014 (hereinafter referred to as the principal rules), in rule 4, the following proviso shall be inserted, namely:—  
“Provided that where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means.”
- In the principal rules, in rule 6, for the words “every listed company”, the words “every listed public company” shall be substituted.
- In the principal rules, for rule 13, the following rule shall be

substituted, namely:-

“13. **Special Resolution.**- A resolution passed at a general meeting in terms of sub-section (3) of section 186 to give any loan or guarantee or investment or providing any security or the acquisition under sub-section (2) of section 186 shall specify the total amount up to which the Board of Directors are authorised to give such loan or guarantee, to provide such security or make such acquisition:

Provided that the company shall disclose to the members in the financial statement the full particulars in accordance with the provisions of sub-section (4) of section 186.”

**K V R MURTY**  
Joint Secretary

## 06 Companies (Registration Offices and Fees) Second Amendment Rules, 2018

[Issued by the Ministry of Corporate Affairs vide F.No. 1/16/2013- CL.V (Pt.I) dated 07.05.2018. Published in the Gazette of India Extraordinary, Part - II, Section - 3, Sub Section (i) vide Notification No. G.S.R. 435(E) dated 07.05.2018]

In exercise of the powers conferred by sections 396, 398, 399, 403 and 404 read with subsections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Registration Offices and Fees) Rules, 2014, namely:—

- (1) These rules may be called the Companies (Registration Offices and Fees) Second Amendment Rules, 2018.  
(2) Save as otherwise provided in these rules, they shall come into force on the date of their publication in the Official Gazette.
- In the Companies (Registration Offices and Fees) Rules, 2014, (herein after refer to as the principal rules), for proviso to sub-rule (3) of rule 10, the following proviso shall be substituted.  
“Provided that Registrar shall allow fifteen days’ time for re-submission in case of reservation of a name through web service – RUN for rectifications of defects if any.”
- In the Principal rules, in the Annexure, in item I (Fee for filing under section 403 of the Companies Act, 2013,-  
(a), for sub-item B, the following sub-item shall be substituted:-  
“B. Following Table of additional fee shall be applicable for delay in filing of forms other than for increase in Nominal Share Capital or forms under section 92/137 of the Act.

TABLE

Sl. No.	Period of delays	Forms including charge documents
01	upto 15 days (sections 139 and 157)	One time
02	More than 15 days and upto 30 days (Sections 139 and 157) and upto 30 days in remaining forms.	2 times of normal filing fees
03	More than 30 days and upto 60 days	4 times of normal filing fees
04	More than 60 days and upto 90 days	6 times of normal filing fees
05	More than 90 days and upto 180 days	10 times of normal filing fees
06	Beyond 180 days	12 times of normal filing fees

Note.- The belated filing of documents/forms (including increasing in nominal capital and delay caused thereon) which were due to be filed whether in Companies Act, 1956 Act or the Companies Act, 2013 Act i.e due for filing prior to notification of these fee rules, the fee payable at the time of actual filing shall be applicable”.

(b), after sub-item C, the following sub-item shall be inserted, namely:--  
**“D. For Forms under section 92 or 137:-** (i) In case the period within which a document required to be submitted under section 92 or 137 of the Act expires **after 30/06/2018**, the additional fee mentioned in Table shall be payable:-

TABLE

Sl. No.	Period of delay	Additional fee payable (in Rs.)
01	Delay beyond period provided under Section 92(4) of the Act	One Hundred per day
02	Delay beyond period provided under Section 137(1) of the Act	One Hundred per day

(ii) In all other cases where the belated annual returns or balance sheet/financial statement which were due to be filed whether in the Companies Act, 1956 or the Companies Act, 2013 the following additional fee mentioned in Table shall be payable:-

TABLE

Sl. No.	Period of delay	Additional fee payable (in Rs.) 30/06/2018	<i>plus Rs. 100 per day with effect from 01/07/2018</i>
01	Up to 30 days	2 times of normal filing fees	
02	More than 30 days and up to 60 days	4 times of normal filing fees	
03	More than 60 days and up to 90 days	6 times of normal filing fees	
04	More than 90 days and up to 180 days	10 times of normal filing fees	
05	Beyond 180 days	12 times of normal filing fees	

**Note:** (1) The additional fee shall also be applicable to revised financial statement or board's report under section 130 and 131 of the Act and secretarial audit report filed by the company secretary in practice under section 204 of the Act.

(2) The belated filing of documents/forms (including increasing in nominal capital and delay caused thereon) which were due to be filed whether in Companies Act, 1956 Act or the Companies Act, 2013 Act i.e due for filing prior to notification of these fee rules, the fee payable at the time of actual filing shall be applicable”.

**K V R MURTY**  
Joint Secretary

## 07 Companies (Prospectus and Allotment of Securities) Amendment Rules, 2018

[Issued by the Ministry of Corporate Affairs vide F.No. 1/21/2013- CL.V dated 07.05.2018. Published in the Gazette of India Extraordinary, Part - II, Section - 3, Sub Section (i) vide Notification No. G.S.R. 430(E) dated 07.05.2018]

In exercise of the powers conferred by section 26 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Prospectus and Allotment of Securities) Rules, 2014, namely: -

- 1) These rules may be called the Companies (Prospectus and Allotment of Securities) Amendment Rules, 2018.  
(2) They shall come into force on the date of their publication in the Official Gazette.
- In the Companies (Prospectus and Allotment of Securities) Rules, 2014, the rule 3, rule 4, rule 5 and rule 6 shall be omitted.

**K V R MURTY**  
Joint Secretary

## 08

### Companies (Share Capital and Debentures) Second Amendment Rules, 2018

[Issued by the Ministry of Corporate Affairs vide F.No. 01/04/2013-CL-V-Part-III dated 07.05.2018. Published in the Gazette of India Extraordinary, Part - II, Section - 3, Sub Section (i) vide Notification No. G.S.R. 434(E) dated 07.05.2018]

In exercise of the powers conferred by sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Share Capital and Debentures) Rules, 2014, namely:—

- Short title and commencement.**— (1) These rules may be called the Companies (Share Capital and Debentures) Second Amendment Rules, 2018.  
(2) They shall come into force on the date of their publication in the official Gazette.
- In the Companies (Share Capital and Debentures) Rules, 2014, in the principal rules, in rule 8, in sub-rule (1), in the Explanation, in clause (i) in sub-clause (a), the words “for at least last one year” shall be omitted..

**K V R MURTY**  
Joint Secretary

## 09

### Companies (Specification of Definition Details) Amendment Rules 2018

[Issued by the Ministry of Corporate Affairs vide F.No. 01/13/2013-CL-V-(Pt.-I) dated 07.05.2018. Published in the Gazette of India Extraordinary, Part - II, Section - 3, Sub Section (i) vide Notification No. G.S.R. 443(E) dated 07.05.2018]

In exercise of the powers conferred under sub-clause (ix) of clause (76), sub-clause (iii) of clause (77) of section 2, read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Specification of Definitions Details) Rules, 2014, namely: -

- Short title and commencement. - (1) These rules may be called the Companies (Specification of Definitions Details) Amendment Rules, 2018.  
(2) They shall come into force on the date of their publication in the Official Gazette.
- In the Companies (Specification of Definitions Details) Rules, 2014, in rule 2, in sub-rule (1), clause (r) shall be omitted.

**K V R MURTY**  
Joint Secretary

## 10

### Notification No. G.S.R. 432 (E) - Corrigendum

[Issued by the Ministry of Corporate Affairs vide F.No. 1/33/2013-CL-V (Part) dated 17.05.2018. To be published in the Gazette of India Extraordinary, Part - II, Section - 3, Sub Section (ii) ]

In the notification of the Government of India in the Ministry of Corporate Affairs number G.S.R. 432(E), dated the 7th May, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (j), dated the 7th May, 2018, at page 2, in line 7, for “Amendment” read “Second Amendment”.

**K V R MURTY**  
Joint Secretary

## 11

### Clarification with regard to provisions under section 135 (5) of the Companies Act, 2013

[Issued by the Ministry of Corporate Affairs vide General Circular No. 06/2018 F. No.



08/05/2018-CSR dated 28.05.2018.]

1. I am directed to say that concerns have been raised by some stakeholders regarding non-compliance of the first proviso to sub-section (5) of section 135 of the Companies Act, 2013, which lays down that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities.
2. It is reiterated that the above provision has to be followed in letter and spirit.

**SEEMA RATH**  
Deputy Director

12

### Circular for implementation of certain recommendations of the Committee on Corporate Governance under the Chairmanship of Shri Uday Kotak

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/CFD/CMD/CIR/P/2018/79 dated 10.05.2018.]

1. The Committee on Corporate Governance under the Chairmanship of Shri Uday Kotak made several recommendations. Most of amendments necessary to implement these recommendations have been made in the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 vide notification dated May 9, 2018. There are a few recommendations as accepted by the Board, which are to be implemented through issue of a circular.
2. Accordingly, the following provisions shall apply to entities whose equity shares are listed on a recognized stock exchange:
  - a. Disclosures on Board Evaluation:**  
The listed entity may consider the following as a part of its disclosures on board evaluation:
    - i. Observations of board evaluation carried out for the year.
    - ii. Previous year's observations and actions taken.
    - iii. Proposed actions based on current year observations.
  - b. Group Governance Unit:**  
Where the listed entity has a large number of unlisted subsidiaries:
    - i. The listed entity may monitor their governance through a dedicated group governance unit or Governance Committee comprising the members of its board of directors.
    - ii. A strong and effective group governance policy may be established by the entity.
    - iii. The decision of setting up of such a unit/committee or having such a policy shall lie with the board of directors of the listed entity.
  - c. Medium-term and long-term strategy:**  
The listed entity may consider the following with respect to disclosure of medium-term and long-term strategy of the entity:
    - i. It may disclose, under the Management Discussion and Analysis section of the Annual report, within the limits set by its competitive position, its medium-term and long-term strategy based on a time frame as determined by its board of directors.
    - ii. The listed entity may articulate a clear set of long-term metrics specific to the company's long term strategy to allow for appropriate measurement of progress.
  - d. The clause 4.4 of the SEBI Circular No. CIR/CFD/CMD/56/2016 dated May 27, 2016 shall stand deleted.**
3. This circular is issued in exercise of the powers conferred under sections 11 and 11A of the Securities and Exchange Board of

India Act, 1992 read with regulation 101 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

4. This circular is available at [www.sebi.gov.in](http://www.sebi.gov.in) under the link "Legal" and "Circulars".
5. The recognized Stock Exchanges are advised to disseminate the contents of this circular on their website.

**PRADEEP RAMAKRISHNAN**  
Deputy General Manager

13

### Amendment to SEBI Circular No. IMD/FPIC/CIR/P/2018/61 dated April 5, 2018 and Circular No. IMD/FPIC/CIR/P/2018/74 dated April 27, 2018 on Monitoring of Foreign Investment limits in listed Indian companies

[Issued by the Securities and Exchange Board of India vide Circular No. SSEBI/HO/IMD/FPIC/CIR/P/2018/81 dated 17.05.2018.]

1. SEBI vide Circular No. IMD/FPIC/CIR/P/2018/61 dated April 5, 2018 introduced a new system for Monitoring of Foreign Investment limits in listed Indian companies and prescribed guidelines w.r.t the necessary infrastructure, data to be provided by listed Indian companies and other related matters.
2. In view of the requests from various stakeholders, the following has been decided:
  - 2.1. The deadline for the companies to provide the necessary data to the depositories has been extended to May 25, 2018.
  - 2.2. The new system for monitoring foreign investment limits in listed Indian companies shall be made operational on June 01, 2018.
3. This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992.
4. A copy of this circular is available at the web page "Circulars" on our website [www.sebi.gov.in](http://www.sebi.gov.in). Custodians are requested to bring the contents of this circular to the notice of their FPI clients.

**ACHAL SINGH**  
Deputy General Manager

14

### Investment of own funds (excluding funds lying in Core Settlement Guarantee Fund) by Clearing Corporations in International Financial Services Centre (IFSC)

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MRD/DRMNP/CIR/P/2018/82 dated 21.05.2018.]

1. SEBI vide circular SEBI/HO/MRD/DRMNP/CIR/P/2016/54 dated May 04, 2016, has specified Investment policy of a clearing corporation.
2. Currently, the clearing corporations are permitted to invest their own funds as well as funds lying in Core Settlement Guarantee Fund in Fixed Deposits/ Central Government Securities and Liquid schemes of Debt Mutual Funds.
3. Upon review of investment instruments/avenues available for Clearing Corporations in IFSC and based on the feedback received, it has been decided to permit the Clearing Corporations in IFSC to invest their own funds in AAA rated Foreign Sovereign Securities. However, the investment in such AAA rated Foreign Sovereign Securities shall not exceed a limit of ten per cent of the total investible resources, excluding funds lying in Core Settlement Guarantee Fund of the Clearing Corporation.
4. This circular is being issued in exercise of powers conferred under

Section 11 (1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market.

**SANJAY PURAO**

General Manager

15

## Segregated Nominee Account Structure in International Financial Service Centre (IFSC)

[Issued by the Securities and Exchange Board of India vide Notification No. SEBI/HO/MRD/DRMNP/CIR/P/2018/83 dated 24.05.2018.]

1. With a view to further facilitate ease of market access for foreign investors in IFSC and based on feedback received from market participants, it has been decided to permit Segregated Nominee Account Structure in IFSC wherein orders of foreign investors may be routed through eligible Segregated Nominee Account Providers (hereinafter referred to as 'Providers'), for trading on stock exchanges in IFSC while adhering to regulatory requirements, inter alia, relating to identification of end-client, Unique Client Code, order placement at client level, client level margining and position limits.
2. The broad features of the Segregated Nominee Account Structure are given in Annexure, enclosed herewith.
3. It shall be obligatory on the stock exchanges, brokers and 'Providers' to furnish to SEBI, inter alia, information relating to trades on stock exchanges in IFSC originated by/through 'Providers', including KYC details of their end-clients, as and when requested.
4. Stock exchanges in IFSC shall ensure that the provisions of Prevention of Money Laundering Act, 2002 (PMLA) and the rules thereof, including those relating to capturing the KYC information for sharing with the Central KYC Registry (CKYCR) to the extent applicable to FPIs, are adhered to by 'Providers' for their end-clients.
5. Stock Exchanges and Clearing corporations are directed to:
  - a) take necessary steps to put in place systems for implementation of the circular, including necessary amendments to the relevant bye-laws, rules and regulations;
  - b) bring the provisions of this circular to the notice of their members and also disseminate the same on their websites; and
  - c) communicate to SEBI, the status of implementation of the provisions of this circular in the Monthly Report.
6. This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

**SANJAY PURAO**

General Manager

16

## System-driven Disclosures in Securities Market

[Issued by the Securities and Exchange Board of India vide Notification No. SEBI/HO/CFD/DCRI/CIR/P/2018/85 dated 28.05.2018.]

1. SEBI, vide circular dated December 01, 2015, had introduced system-driven disclosures in securities market detailing the procedure to be adopted for its implementation with effect from January 01, 2016. The procedure was further streamlined vide SEBI circular dated December 21, 2016.
2. As specified in SEBI circular dated December 01, 2015, the system is being implemented in phases and in the first phase, the disclosures of promoter/promoter group under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations,

2011 (hereinafter referred to as "SAST Regulations") and SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "PIT Regulations") have been implemented.

3. It is now proposed to implement the next phase of the system which shall pertain to the following additional disclosures:
  - a. Disclosures under Regulation 29(1) and 29(2) of SAST Regulations by non-promoters.
  - b. Disclosures under Regulation 7(2) of PIT Regulations pertaining to directors and employees of the company.
4. The CEO and upto two levels below CEO of a company shall be deemed as employees for the purpose of system-driven disclosures in respect of Regulation 7(2) (b) of PIT Regulations.
5. For the purpose of system driven disclosure, the requirement specified under Regulation 29(4) of SAST Regulations shall not be applied to a scheduled commercial bank or public financial institution as pledgee irrespective of whether such a pledge is for securing indebtedness in the ordinary course of business or not.
6. The procedure required for implementation of the aforesaid disclosures is provided at **Annexure-A**.
7. The system would continue to run in parallel with the existing system i.e. the entities shall continue to comply with the disclosure obligations under SAST Regulations and PIT Regulations as applicable to them.
8. The Depositories and Stock Exchanges shall make necessary arrangements so that the aforesaid disclosures pertaining to SAST Regulations and PIT Regulations are disseminated on the websites of respective stock exchanges from **August 01, 2018**.
9. Other requirements of SEBI circulars dated December 01, 2015 and December 21, 2016 on the same subject will remain in force.
10. This circular is issued in exercise of powers conferred by section 11(1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.
11. A copy of this circular is available on SEBI website at [www.sebi.gov.in](http://www.sebi.gov.in) under the categories "Legal Framework/Circulars".

**RAJESH GUJJAR**

Deputy General Manager

### ANNEXURE - A

#### Procedure

The following would be the steps / process required to be taken for implementation of the second phase:

#### SAST Regulations:

1. The various formats for sharing of data shall be standardized as agreed upon by the depositories and exchanges.
2. For the purpose of Regulation 29(4) of SAST Regulations, the depositories shall tag the scheduled commercial banks and public financial institutions in their systems for excluding them from disclosure requirements.
3. The depositories shall share data with each other, on a daily basis, pertaining to non-promoter shareholders of a company who are holding more than 2% in the company.
4. The details of shareholding of those non-promoters whose combined shareholding is more than 5% in the company shall be provided by the depositories to the stock exchanges on a daily basis.
5. The stock exchanges shall then identify the data requiring disclosure under SAST Regulations and disseminate the same on its website in accordance with the respective Regulations.
6. Any discrepancy observed by the entities must be communicated to the respective stock exchanges which may then resolve the issue in coordination with the depositories.

**PIT Regulations:**

1. The various formats for sharing of data shall be standardized as agreed upon by the depositories and exchanges.
2. The first step would be to build a database of the existing holdings at ISIN level of all the directors and employees of each listed company. The listed company will be required to provide to all the depositories the information about the directors and employees. The information provided by the listed company to the depositories must be authenticated and shall be provided within 15 days from the date of SEBI circular. The information provided by the listed companies to the depositories shall be in the manner prescribed by depositories and must also include the PAN of the entity. In respect of PAN exempt entities, the account numbers shall be provided.
3. Based on the PAN/account numbers, the depositories will tag such demat accounts in their depository systems at ISIN level.
4. In case of any subsequent changes in the directors/employees of the listed company, the company shall provide the information of the changes to the depositories on an immediate basis and not later than 2 working days.
5. The listed company shall select one of the depositories as a Designated Depository for the purpose of disclosure of data for that particular company. In respect of the identified directors/employees for a listed company, the Designated Depository shall aggregate its data along with the data received from the other depository for the particular company.
6. The data shall be processed by the Designated Depository and the identified data requiring disclosure in terms of PIT Regulations shall be sent to the respective stock exchanges on a daily basis for dissemination on their website.
7. Any discrepancy observed by the entities must be communicated to the respective Stock Exchanges which may then resolve the issue in coordination with the depositories.

## 17 Enhanced Disclosure and Transparency Norms for Credit Rating Agencies

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MIRSD/DOP2/CIR/P/2018/86 dated 30.05.2018.]

In order to enhance the governance, accountability and functioning of Credit Rating Agencies (CRAs), a Consultation Paper comprising proposals pertaining to, inter-alia, rating process followed by the CRAs and disclosures pertaining to the ratings assigned, was issued for public comments on September 08, 2017. Taking into consideration the comments and suggestions received from the public, the following guidelines are being issued:

1. **Request by Issuers for review of ratings provided by CRAs:**
  - A. In the interest of transparency and fairness, it has been decided that all cases of requests by an Issuers for review of the rating(s) provided to its instrument(s) by the CRA, shall be reviewed by a Rating Committee of the CRA that shall consist of a majority of independent members.
  - B. As defined in the Circular for Enhanced Standards for CRAs dated November 01, 2016, "independent" would mean people not having any pecuniary relationship with the CRA or any of its employees.
2. **Disclosures in case of ratings not accepted by an Issuer**
  - A. In order to make the disclosures more relevant, it is clarified that all non-accepted ratings shall be disclosed on the CRA's website for a period of 12 months from the date of such rating

being disclosed as a non-accepted rating on the CRA's website in the following format:

S. No	Name of the Issuer	Sector (Finance & Banking, Textiles, etc.)	Instrument Type (NCD, Preference Shares, CP, CD, etc.)	Issue Size (₹ millions)	Date of Non-acceptance	Listing Status (Listed/ Unlisted)	Rating assigned

3. **Rationalization of disclosures:**
  - A. A Rating Summary Sheet presenting a snapshot of the rating actions carried out during the half-year, shall be uploaded by the CRAs on their websites on a half-yearly basis, within 15 days from the end of the half-year (March/September), in the format specified at **Annexure A**.
  - B. Such disclosure shall be segregated for ratings assigned to -
    - I. Securities; and
    - II. Financial instruments other than securities.
  - C. **Modification in formats of disclosure requirements of SEBI Circular CIR/ MIRSD/ CRA/ 6/ 2010 dated May 3, 2010**
    - I. In order to enhance the quality of these disclosures, improve accountability of CRAs and to facilitate the public in understanding the promptness of the CRA in taking the rating action, the formats of disclosure requirements of SEBI Circular CIR/MIRSD/CRA/6/2010 dated May 3, 2010 are hereby modified. The revised format of these disclosures is specified at **Annexure B**.
    - II. Annexure IV of the aforementioned Circular stands deleted.
    - III. Annexure VI of the aforementioned Circular, disclosing the list of defaults separately for each rating category, shall now be disclosed on a half-yearly basis.
    - IV. With respect to Annexure VII, the following terms, in addition to those already defined under Point 2.2 of the aforementioned Circular, shall have the meaning as under:
      - a. **Debt-weighted default rate:** the amount of rated debt that defaulted in the static pool as a percentage of the total amount of rated debt in the static pool.
      - b. **Averaging for debt-weighted default rate** shall be based on the weighted average method where weights shall be the amount of debt rated in each static period.
    - V. For ease of understanding by the investors, these disclosures shall be prepared and disclosed separately for ratings of
      - a. Securities; and
      - b. Financial instruments other than securities.
4. **Internal Audit of CRAs:**
  - A. Compliance by CRA with the provisions of this Circular shall be verified during the half-yearly Internal Audit.
  - B. Further, with respect to point 6 A III of Circular dated Nov 01, 2016, it is hereby clarified that the audit team must be composed of, at least, a Chartered Accountant (ACA/ FCA) and a Certified Information Systems Auditor/ Diploma in Information Systems Auditor (CISA/ DISA).
5. This circular is issued in exercise of the powers conferred by Section 11 (1) of Securities and Exchange Board of India Act, 1992 read with the provisions of Regulation 20 of SEBI (Credit Rating Agencies) Regulations, 1999, to protect the interest of investors in securities and to promote the development of, and to regulate, the securities market.

**SURABHI GUPTA**  
Deputy General Manager





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## ICSI Strategic Leadership program (SLP) held from 26th to 28th April 2018 in collaboration with National Law University Delhi (NLU-D)



President ICSI and Vice Chancellor, NLU-D along with participants at National Law University, Delhi on 26th April, 2018.

The Institute of Company Secretaries of India, ICSI has successfully organized 03 days Joint Certification course on ICSI - Strategic Leadership program (SLP) in collaboration with National Law University Delhi (NLU-D).

The inauguration of the programme was held on 26th April 2018 at NLU-Delhi. CS Makarand Lele, President ICSI, Prof. (Dr) Ranbir Singh, Vice chancellor of the University, Prof (Dr) Harpreet Kaur along with Dr. S K Jena, Director T&P, ICSI presided over the inaugural function. Members from various Corporate and from Practice participated in three days program.

The program was especially designed for capacity building of our members in Drafting , appearance and pleading before various tribunals and quasi-judicial bodies . Professors of NLU-Delhi, Technical member of regulatory bodies, Senior Advocate of supreme court, Partners of the law firms, Corporate leaders took the Technical Sessions on emerging areas. The sessions covered various aspects of Companies Act, Security laws, Corporate Disputes and Litigations, Regulatory aspects of FEMA, PMLA, The training pedagogy focused on Case Study analysis, Interactive Discussion, Practical Activity based Learning in a moot court environment. The participants ardently involved in the process and interacted with the senior experts from industries and Academia.

Valedictory function of SLP was organised on 28th April 2018 at NLU-Delhi. CS Dinesh C. Arora, the secretary ICSI along with Prof (Dr) Harpreet Kaur and Dr S K Jena, Director T&P, ICSI graced the valedictory function. The participants were distributed the joint Certificate of ICSI and National Law University, Delhi for successful completion of the three days Program with Credit hours. The Chief Guest and other dignitaries congratulated the participants on successful completion of the certificate course. The participants shared their views about the initiative of ICSI to organise such program in an esteemed organisation like National Law University and appreciated the efforts.

The journey through ICSI-Strategic Leadership program was a memorable experience for the participants who were awarded with the joint certificate of ICSI and NLU-Delhi on Strategic Leadership program (SLP). The participants in their feedback appreciated President (ICSI) and the efforts put in by the team of ICSI and the faculty of NLU-Delhi for organizing such a unique joint collaborative program and requested to continue the same in future for the benefit of the CS professionals.

### Vision

"To be a global leader in promoting good corporate governance"

### Motto

सत्यं वद। धर्मं चर। इच्छते केह ल्याके. नरेण्डे हेतु केह केह।

### Mission

"To develop high calibre professionals facilitating good corporate governance"

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# 5

## NEWS FROM THE INSTITUTE



- MEMBERS RESTORED DURING THE MONTH OF APRIL 2018
- CERTIFICATE OF PRACTICE SURRENDERED DURING THE MONTH OF APRIL 2018
- ATTENTION MEMBERS
- PAYMENT OF ANNUAL MEMBERSHIP AND CERTIFICATE OF PRACTICE FEE FOR THE YEAR 2018-2019
- CONGRATULATIONS !!!
- COUNCIL / REGIONAL COUNCILS ELECTIONS – 2018
- CSBF CORNER
- OBITUARIES



## Institute News

### MEMBERS RESTORED DURING THE MONTH OF APRIL 2018

S. NO.	A/F	MEM. NO.	MEM. NAME	PLACE
1	A	34904	CS NANDKUMAR DADASO PATIL	WIRC
2	A	50366	CS DOLLY LOHIA	EIRC
3	F	2798	CS JOSEPH CECIL FRANCIS SEQUEIRA	WIRC
4	A	13087	CS BULUSU SUNDARA LAKSHMI	SIRC
5	A	17749	CS PRAMILA PARAKH	EIRC
6	A	34904	CS NANDKUMAR DADASO PATIL	WIRC
7	A	47204	CS RITESH KHATOD	NIRC
8	A	8646	CS JAYARAM RAJAN	WIRC
9	A	7867	CS KANKANA MAHANTA	EIRC
10	A	38077	CS JIGNA NIRAV MALDE	WIRC
11	A	34561	CS BHOOMI PRAMODKUMAR MEWADA	WIRC
12	A	47876	CS MANISHA YADAV	NIRC
13	A	15108	CS VAISHALI CHHABRA	NIRC
14	A	22420	CS PRERNA BADALIA	WIRC
15	A	11094	CS UJWALA P. WAKHLE	WIRC
16	A	15652	CS VYANJANA KIRITBHAI PANDYA	WIRC
17	A	19624	CS TRIPTI KANWAR SEKSARIA	EIRC
18	A	28143	CS ANNIE JACOB	SIRC
19	A	46379	CS SHREE KRISHNA VIJAY JOSHI	WIRC
20	A	41547	CS MANASI SHRIMALI	NIRC
21	A	18164	CS KRANTHI SWARUPA KOLLI	SIRC
22	A	33600	CS REKHA GAURAV LONGIA	NIRC
23	A	4678	CS BAJRANG LAL BAJAJ	EIRC
24	F	4709	CS M KRISHNAN	NIRC
25	F	3928	CS RAJIV MALIK	NIRC
26	A	46014	CS TANVI BHATIA	NIRC
27	A	47307	CS DAYASHANKAR	EIRC
28	A	12669	CS SUBODH RAMAKANT GORE	WIRC
29	A	29278	CS LEENA NAIR	WIRC
30	A	29671	CS RENUKA M C	SIRC
31	A	36736	CS PUJA AGARWAL	EIRC
32	A	29279	CS PRACHI DINKAR NERALKAR	WIRC
33	A	25878	CS MANISH PANJWANI	NIRC
34	F	3647	CS VIKRAM MANOHAR MUNJE	WIRC
35	F	4022	CS RAJIV AGARWAL	NIRC
36	A	43699	CS MANISH BAID	EIRC
37	A	20250	CS DARA SHASHI RAJ	SIRC
38	A	22039	CS ARUN KUMAR SINGHAL	NIRC
39	A	6572	CS ARUN S AGARWAL	WIRC
40	A	45634	CS GARIMA YADAV	NIRC
41	A	26113	CS BHARATRAJ PANCHAL	SIRC
42	A	27861	CS AAGVI CHINTAN BOTADRA	WIRC

### CERTIFICATE OF PRACTICE SURRENDERED DURING THE MONTH OF APRIL 2018

SL. NO.	NAME	ACS/FCS NO.	COP NO.	REGN
1	SH. RAMASWAMI JAYARAMAN	FCS - 3212	1830	SIRC
2	SH. RAJESH SHARMA	FCS - 5262	3529	NIRC
3	SH. V PADMANABHAN NAMBI	ACS - 4558	8008	SIRC
4	MR. NAVIN MURLI MAHESHWARI	FCS - 8897	8434	WIRC
5	SH. ANURAG GANGRADE	FCS - 9187	13013	WIRC
6	MR. DHANRAJ KRISHNA SALIYAN	ACS - 4837	13268	WIRC
7	MS NEHA AGARWAL	ACS - 4936	13715	NIRC
8	MS. VISHAKHA PRASANNA DESHMUKH	ACS - 7108	14025	WIRC
9	MS. GEETA GOSWAMI	ACS - 4228	15213	NIRC
10	MS. ANKITA GAJENDRA JAIN	ACS - 40613	15620	WIRC
11	MS. ANURADHA CHANDRAKANT SHANBHAG	ACS - 37653	15911	SIRC
12	MS. SONAM JAIN	ACS - 43566	16253	NIRC
13	MS. SMITHA AITHAL	ACS - 44329	16292	SIRC
14	MR. AJAY KUMAR THAKUR	ACS - 44714	16429	NIRC
15	MR. ASHISH GROVER	ACS - 45821	16683	NIRC
16	MR. VIBHU GAUTAM	ACS - 45411	16843	NIRC
17	MS DEEPTI GAURAV	FCS - 7334	17510	NIRC
18	MS. NAINA KAUSHAL	ACS - 44732	17520	NIRC
19	MS. SWETA AGARWAL	ACS - 47628	17526	EIRC
20	MR. CHETAN BHARAT KHALADKAR	ACS - 48103	17565	WIRC
21	SH. ANAND KUMAR MISHRA	FCS - 7207	17807	NIRC
22	MS. TANYA GROVER	ACS - 47831	17942	NIRC
23	MS. RUPALI SHARMA	ACS - 47473	18129	WIRC
24	MS. NIKITA RANJIT JAIN	ACS - 41987	18185	WIRC
25	MR. DAVE BHAGYA	ACS - 43985	19002	WIRC
26	MR. SOURABH BANSAL	ACS - 49529	19250	NIRC
27	MR. ANAND LOHIA	ACS - 48220	19380	EIRC
28	MR. SUMIT DASS	ACS - 44223	19674	NIRC
29	MR. HIMANSHU KHOSLA	ACS - 44905	19799	NIRC
30	MS. SNEHA BAID	ACS - 49076	19812	NIRC
31	MR. REJOY MOHAN	ACS - 30422	19865	SIRC
32	MS. ASWATHY PRADEEP	ACS - 49119	20005	SIRC
33	MR. HARSH PAHWA	ACS - 54124	20017	NIRC
34	MS. VIDHI JHALANI	ACS - 40689	20097	NIRC
35	MS. TANIYA KOUR	ACS - 47361	20209	NIRC

### ATTENTION MEMBERS

For latest admission of Associate and Fellow Members, Life Members of Company Secretaries Benevolent Fund (CSBF), Licentiatees and issuance of Certificate of Practice, kindly refer to the link <http://www.icsi.edu/Member.aspx>

### KNOW YOUR MEMBER (KYM)

A User Manual for filling the Know Your Member (KYM) proforma online is available at the below link: [https://www.icsi.in/student/Portals/0/Manual/KYM\\_Usermanual.pdf](https://www.icsi.in/student/Portals/0/Manual/KYM_Usermanual.pdf)



## PAYMENT OF ANNUAL MEMBERSHIP AND CERTIFICATE OF PRACTICE FEE FOR THE YEAR 2018-2019

The annual membership fee and certificate of practice fee for the year 2018-2019 has become due for payment w.e.f. 1st April, 2018. The last date for the payment of fee is 30th June, 2018.

The membership and certificate of practice fee payable is as follows: The membership and certificate of practice fee payable is as follows:

Particulars	Associate (admitted till 31.03.2015)	Associate (admitted on or after 01.04.2015)	Fellow
Annual Membership fee*	Rs. 2950	Rs. 1770	Rs. 3540
Entrance fee *	Rs. 2360	Rs. 2360	Rs. 2360
Restoration fee*	Rs. 295	Rs. 295	Rs. 295
Certificate of Practice fee*	Rs. 2360	Rs. 1770	Rs. 2360

\* Fee inclusive of applicable GST@18%.

A member who is of the age of sixty years or above and is not in any gainful employment or practice can claim 50% concession in the payment of Associate/Fellow Annual Membership fee and a member who is of the age of seventy years or above and is not in any gainful employment or practice can claim 75% concession in the payment of Associate/Fellow Annual Membership fee subject to the furnishing of declaration to that effect. Please note the members possessing the Certificate of Practice can not avail the benefit of concession in annual membership fee.

The certificate of practice fee must be accompanied by a declaration in form D duly completed in all respects and signed. The requisite form 'D' is available on the website of Institute [www.icsi.edu](http://www.icsi.edu)

### MODE OF REMITTANCE OF FEE

The fee can be remitted by way of:

- (i) Online (through payment gateway of the Institute's website ([www.icsi.edu](http://www.icsi.edu)))
- (ii) Cheque at par/Demand draft/Pay order payable at New Delhi (indicating on the reverse name and membership number) drawn in favour of 'The Institute of Company Secretaries of India' at the Institute's Headquarter. The members are requested to ensure that their cheque/DD reaches us latest by 25-06-2018.
- (iii) At ICSI HQ at Delhi or Noida in person by cash/cheque at par/DD at the reception counter from 9:00 am to 4:00 pm.

For queries, if any, the members may please write to Mr. Jitendra Kumar, Executive Assistant at email id [jitendra.kumar@icsi.edu](mailto:jitendra.kumar@icsi.edu)

### CONGRATULATIONS !!!

**Shri Sanjeev Grover, FCS**, on his being appointed as Company Secretary and Compliance Officer of Maruti Suzuki India Limited with effect from 21st March, 2018.

### ATTENTION

#### MEMBERS HOLDING CERTIFICATE OF PRACTICE

The Institute has brought out a CD containing List of Members holding Certificate of Practice of the Institute as on 31st March 2018. The CDs are available at Noida office of the Institute and will be provided free of cost to the members holding Certificate of Practice on receipt of request.

Request may please be sent to the Directorate of Membership at e-mail id: [saurabh.bansal@icsi.edu](mailto:saurabh.bansal@icsi.edu)

### OBITUARIES

Chartered Secretary deeply regrets to record the sad demise of the following Members:

**CS Sudhendu Saha** (19.01.1936 – 19.01.2018), a Fellow Member of the Institute from Kolkata.

**CS Sanjeev Kumar Ajmani** (20.11.1960 – 09.03.2018), a Fellow Member of the Institute from New Delhi.

**CS Ratilal K Bharadva** (16.04.1940 – 20.03.2018), an Associate Member of the Institute from Mumbai.

**CS S S Mani** (30.06.1957 – 16.12.2017), an Associate Member of the Institute from Chennai.

**CS Deepak Acharya** (30.06.1968 – 23.04.2018), an Associate Member of the Institute from Dhenkanal Distt.

**CS Sumit Singh** (26.04.1975 – 16.03.2018), an Associate Member of the Institute from Lucknow.

May the almighty give sufficient fortitude to the bereaved family members to withstand the irreparable loss.

May the departed souls rest in peace.

## COUNCIL / REGIONAL COUNCILS ELECTIONS – 2018

### Payment of annual membership fee for FY 2018-19 and uploading of photograph and signature on the portal of the Institute

The term of the existing Council and the Regional Councils will expire on 18th January 2019 and the elections for the new Council / Regional Councils will be held during the month of December 2018. In accordance with Rule 5 of the Company Secretaries (Election to the Council) Rules, 2006, a member, whose name is borne on the Register of Members on the 1st day of April 2018 shall be eligible to vote in the election from the Regional constituencies within whose territorial jurisdiction his/her professional address falls on the 1st day of April 2018, provided that on the date of publication of the list of voters, his/her name has not been removed from the Register in terms of Section 20 of the Company Secretaries Act, 1980. If the professional address is not borne on the Register on the 1st day of April 2018, the residential address borne on the Register on the 1st day of April 2018 shall be determining his/her Regional constituency. In the case of members having their professional address outside India and eligible to vote, their Regional Constituencies shall be determined according to their professional addresses in India registered immediately before they went abroad or the residential addresses in India borne on the Register on the relevant date, whichever is later.

The members who have not yet applied for the issue of the identity cards may apply for the same at [kedar.singh@icsi.edu](mailto:kedar.singh@icsi.edu)

Members should also ensure that their scanned photograph and signature in .jpg format are uploaded on the online portal of the Institute.

#### Online Steps for Uploading of photo image:

- Login to portal [www.icsi.edu](http://www.icsi.edu)
- Click Online services on the right top corner and then click Member Login
- Fill the User name which is the membership number (e.g. A1234) and then the Password.
- (In case a member does not have/remember his/her password, he/she can get the password by clicking on to the Retrieve option. The password will be sent to his/her email registered with the Institute. Alternately, he/she may email at [jitendra.kumar@icsi.edu](mailto:jitendra.kumar@icsi.edu) from his/her email registered with the Institute to get the password on the said email id)
- After login, go to Members Option (from top menu) then click on Manage Account and then click on Manage Image
- Then upload Photo (passport size) and Signature and click on Upload button

In case members face any problem in uploading, they may send their scanned photo / signature in .jpg format at the email id – [meena.bisht@icsi.edu](mailto:meena.bisht@icsi.edu)

**(Dinesh Chandra Arora)**  
Secretary, ICSI

### PAYMENT OF ANNUAL LICENTIATE SUBSCRIPTION FOR THE YEAR 2018-2019

The annual Licentiate subscription for the year 2018-2019 has become due for payment w.e.f 1st April, 2018. The last date for the payment of same is 30th June, 2018. The Licentiate subscription payable is Rs.1180/- per year inclusive of applicable GST@18%.

You are requested to remit at the Institute's Headquarters or Regional/ Chapter offices a sum of Rs.1180/- by way of Demand Draft payable at New Delhi drawn in favour of "The Institute of Company Secretaries of India" indicating your name and Licentiate number on the reverse of the Demand Draft. The details of remittance may please be intimated at email id [licentiate@icsi.edu](mailto:licentiate@icsi.edu)

### CONGRATULATIONS !!!

#### Justice Krishnan Ramasamy



The Institute of Company Secretaries of India (ICSI) and the entire fraternity congratulate Justice Krishnan Ramasamy on being sworn in as Additional Judge of the Madras High Court on 4th June, 2018.

Born on 3rd June, 1968, Justice Krishnan Ramasamy, apart from being a Fellow Member of the Institute of Company Secretaries of India is a Bachelor of Commerce from Bharathidasan University, Trichy; and also holds a Bachelor's degree in Law from Dr. Ambedkar Law University, Chennai.

Elected as Regional Council Member to the SIRC of the ICSI for two consecutive terms, i.e., 2007-10 and 2011-14, he held the post of Treasurer of SIRC of the ICSI in the year 2008 and that of Secretary of SIRC of the ICSI in 2009. He was also designated to the post of Vice-Chairman of SIRC of the ICSI in the year 2010.

We wish him successful and professionally fulfilling times ahead !!!

## SUCCESS STORIES OF CSBF

1. A member of the Institute for over 11 years and a life member of CSBF for over 9 years was 50 years of age and passed away untimely due to cancer. He was survived by his spouse and two sons (one minor son). This tragic incident had devastated the life of the family as the sole bread earner of the family is no more. Needless to say the family was at the brink of financial crisis. It was at this moment the CSBF gave a financial assistance of Rs.7.5 lakh to the spouse of the deceased member and an additional Rs.40,000 towards education allowance for the minor son. Though the loss is irreparable and any amount of money could not compensate for the loss of their beloved, but this small timely assistance from CSBF had its own way helped the family in overcoming some of their difficulties and given them a new ray of hope to survive and face the impending challenges of life.
2. A young member of the Institute who was just 34 years old had left for heavenly abode. This member was not a life member of the CSBF and that made the family ineligible for financial support. Had the member been a life member of CSBF, it would have been of some help to the family members as CSBF provides a financial assistance of Rs.7.5 lakh to the dependents of the deceased life member. Nevertheless, an amount of Rs. 50,000 was granted by the CSBF to the family of the deceased as financial assistance.
3. A life member of CSBF expired when he was around 67 years of age. He left behind his spouse and a son and a daughter. CSBF gave a financial assistance of Rs. 3 lakh to the dependents as the member being of over 60 years of age. Though the loss was irreparable and any amount of money cannot compensate it but this financial assistance from CSBF was surely of some help to the family.

## APPOINTMENT

### RECRUITMENT FOR THE POSITION OF COMPANY SECRETARY

#### THE COMPANY

MPS Ltd. provides content creation, production, transformation, and technology services to global academic, scientific, and educational publishers. The company has a team of more than 2,500 employees based in offices in Bengaluru, Chennai, Gurugram, Noida, and Dehradun in India and at Portland, Oregon; Orlando, Florida; Durham, North Carolina and Effingham, Illinois, in the United States.

As a company, MPS Ltd. is committed to the highest standard of corporate governance and believes in adhering to the norms of good corporate governance to fulfil its responsibility of generating maximum value for all stakeholders in the company. It is listed on the BSE and the NSE.

For any further details regarding the Company, please visit our website - <http://www.adi-mps.com/>

#### CURRENT OPENING

<b>Job Title</b>	- Company Secretary
<b>Qualification</b>	- Company Secretary
<b>Experience</b>	- 10+ Years of work experience including at least about 5 years of experience in a Listed Company may only apply.
<b>Job Description</b>	<ul style="list-style-type: none"> <li>• Implementation and compliance of the Companies Act, 2013, Rules and circulars.</li> <li>• Implementation of Secretarial Standard(s) and complying with the requirements under the Companies Act, 2013, SEBI Regulations (SEBI Takeover Regulations, SEBI InsiderTrading Regulations etc.), Listing Agreement and RBI norms.</li> <li>• Liaising with various Regulators like Registrar of Companies, Stock exchanges, SEBI, NSDL and CDSL</li> <li>• Experience in M &amp; A. Handled the activities related implementation of scheme of Amalgamation including dealing with Lawyers, advisors and NCLT</li> <li>• Preparation for General Meetings, Annual Report including handling E-voting Process and Compliance of other conditions</li> <li>• Coordination with Directors for scheduling of meetings and preparation Agenda and Minutes of Board Meetings, Audit Committee and other Board Committees, Convening and conducting of Board Meetings and Committee Meetings</li> <li>• Maintenance of all statutory records and registers as required under the provisions of Companies Act, 2013 and other applicable laws</li> <li>• Preparing Agenda, Minutes, Notices, Directors Report</li> </ul>
<b>Job Location</b>	- Corporate Office at Noida
<b>Apply at</b>	- <a href="mailto:anjali.pokhriyal@adi-mps.com">anjali.pokhriyal@adi-mps.com</a>

**Note – Please mention the position you are applying for in the subject while sending the CV.**





**THE INSTITUTE OF  
Company Secretaries of India**

**भारतीय कम्पनी सचिव संस्थान**

**IN PURSUIT OF PROFESSIONAL EXCELLENCE**

Statutory body under an Act of Parliament

[www.icsi.edu](http://www.icsi.edu)



## Releases at Golden Jubilee Year National Conference of Practising Company Secretaries (19th Edition)

Dear Professional Colleagues,

The Institute of Company Secretaries of India (ICSI) is dedicated to professional excellence of the profession of Company Secretaries and has made 'inclusive growth' a key element in its various professional platforms. In order to achieve a professional growth process in which people from all walks of life participate and benefit, the ICSI organized the Golden Jubilee Year National Conference of Practising Company Secretaries (19th Edition) at The LaLiT Mumbai during May 18-19, 2018 on the theme '**PCS - A Value Driven Professional**'.

The Conference witnessed launching of Placement App and Release of Publications. Members and students can access pdf version of the releases on ICSI website at : [www.icsi.edu/publication\\_icsi.aspx](http://www.icsi.edu/publication_icsi.aspx)

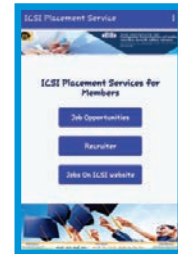
Regards,



**CS Makarand Lele**  
President



Souvenir-cum-Backgrounder



ICSI Placement Services for Members



Company Secretary in Practice - Ready Reckoner

With a View to guide practising members of the Institute to effectively shoulder the new responsibilities under the emergence of newer opportunities and to act independently to provide value added services to their clients, Institute has initiated the publication of a Ready Reckoner for the Company Secretaries in Practice.

The publication will keep them updated with emerging new regulatory framework, advancements in information technology and developments in the profession.



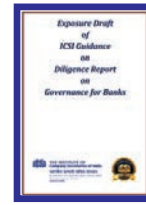
"GST - Simplified Approach and Practical Guide for GST Accounts Assistant" (with incorporating latest amendments upto 30th April, 2018)

Covering the most recent amendments upto 30th April, 2018, the publication "GST - A Simplified Approach and Practical Guide for GST Accounts Assistant" shall prove to be an important facilitator for the prospective GST Accounts Assistants assisting them in understanding the intricacies of GST.



GST Educational Series

GST Educational Series is a one spot compilation of the daily series titled GST Educational Series to facilitate the readers to augment their understanding of the aspects related to GST and continue to be a source of support and enhance their commitment for the subject.



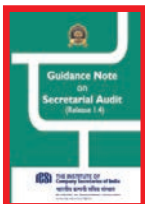
Exposure Draft of ICSI Guidance on Diligence Report on Governance for Banks

Exposure draft of the ICSI Guidance on Diligence Report on Governance for Banks in case of consortium / multiple banking arrangements contains parwise compliance inputs and illustrative checklists. Please forward your views on conference @ icsi.edu.



Transfer Pricing

With the increased level of cross border transactions and Capital mobility, Transfer Pricing has emerged as a distinct field of practice for our members. In fact, our professionals have been taking up the challenges involved in this area with great spirit. So, in order to guide practising members of the Institute to effectively shoulder the new responsibilities under the emergence of newer opportunities to provide value added services to their clients, Institute has brought out the publication of Transfer Pricing for the Company Secretaries.



Guidance Note on Secretarial Audit (Release 1.4)

The concept of Secretarial Audit received due recognition in the Companies Act, 2013 wherein it was made mandatory for both listed companies and another specified set of companies on the basis of their financials.



Practical Aspects of Insolvency Law

This extensive publication would surely be of assistance to the resolution professionals as regards the manner of applying to the National Company Law Tribunal for pursuing the process of resolution and also in identification of significant aspects, documents involved, critical issues of resolution process settled through land mark judgements, etc.



Model Governance Code for Meetings of Gram Panchayats (Marathi Version)

Hard copy of the above publications are available at sales counter of Headoffice, Regional and Chapter Offices also. For any query or feedback, please write to Directorate of PD, PP & Studies at [academics@icsi.edu](mailto:academics@icsi.edu) or 0120-4082125

# 6

## MISCELLANEOUS CORNER



- BOOK REVIEW
- CG CORNER
- ETHICS & SUSTAINABILITY CORNER
- GST CORNER



## Business Valuation in India

*beyond the numbers*

### Co-Authored By:

Pavan Kumar Vijay,  
Chander Sawhney,  
Manoj Kumar,  
Vinod Kumar Aggarwal,  
Manish Srivastava and  
Sameer Verma

**Published by:** Wolters Kluwer  
(India) Pvt. Ltd.

Regd. Office: Mohali, Punjab.

**Foreword by:** Mark L. Zyla

**Pages:** 820

**Price:** Rs.1,795

**B**usiness Valuation in India *beyond the numbers* a comprehensive book which covers commentary and the applicable Companies (Registered Valuers and Valuation Rules, 2017, Extracts of International Valuation Standards, 2017 issued by the International Valuation Standard Council (IVSC) is a unique compilation and systematic presentation of all the aspects relating to the valuation of business enterprises in India and has a beautiful coverage relating over all business valuation requirements and aspects in relation to India specifically in the present era of the Insolvency and Bankruptcy Code, 2016 under which major steel, cement, infrastructure,

real estate and power companies are in the process of the approval and/or successful implementation of the resolution plan submitted or in the process of submission by the resolution applicants and approval by the Committee of Creditors and further confirmation by the National Company Law Tribunal (NCLT) being the Adjudicating Authority.

The Authors have covered all the aspects relating to the valuation of business in India in view of the new Valuation Rules under section 247 of the Companies Act, 2013, specific provisions under the Insolvency and Bankruptcy Code, 2016 which require valuation report from a registered valuer, Registered valuer under the SEBI (REIT and InvIT) Regulations, 2016 as well as the SEBI (Substantial Acquisition and Takeovers) Regulations, 2015, SEBI (Issue of Sweat Equity) Regulations, 2002 and also the income tax requirements.

The Book is a compendium of everything relating to the valuation of business with 360-degree approach and updated status of the law along with various circulars, clarifications, coverage of wide range for providing entire clarity relating to direct and indirect aspects of valuation, practical illustrations on valuation, coverage of taxation and accounting and other aspects under the allied laws on valuation.

The Government has made mandatory requirement for valuation of the shares and business by a Registered Valuer, who has passed 50 Hours educational course organized by Registered Valuer Organisations and further passing of the valuation examinations. The Insolvency and Bankruptcy Board of India has status of the Statutory Body to register the valuers to govern the profession of Valuation. The valuation requirement has also been categorized into three categories viz. Valuation of Land and Building, Plant and Machinery and Securities or Financial Assets. Now, valuation of business in India, is not in the domain of the single valuer as earlier and a company needs to appoint

multiple valuers based on the assets and business of the company.

The book has compilation of data for real experience for the valuation aspects and presented the model valuation in a tabular form as well as provided a model valuation report. The Authors have also critically analysed all the aspects of valuation in view of the requirements of the Income Tax, Company Law, various SEBI Regulations which include technical and procedural difficulties, formulation of valuation strategy and process.

The Authors with their long professional background and experience have provided valuable assemble of data relating to all aspects of valuation which is really a significant contribution to the subject. The Book has Eight Chapters with relevant titles for easy reference and understanding for the resolution applicants, financial institutions, all the stakeholders, Board of directors of the Corporate Debtors, Committee of creditors, auditors and accounting department as a whole.

The Book also has a great source of information presented by way of illustrations given for calculation of the valuation with proper clarity for coverage of activities which may be undertaken in the major heads for complete and easy reference for valuation.

The Resolution Applicants, Resolution Professional, Committee of Creditors and Adjudicating Authority are expected to take timely decision for arriving at the fair value of the enterprise for implementation supported with the adequate disclosures and the estimate financial values. The monitoring of the resolution plan is requirement for the betterment of the company as a whole, as the failure of the resolution plan push the company into liquidation.

The Valuation profession under the new law, rules and regulations are in the initial stage. The existing valuer needs to regain professional knowledge and comply with the requirement



## CORPORATE GOVERNANCE CORNER

## Developments – May, 2018

## Canada: Corporate Governance Reform - Bill receives Royal Assent

for registration as a valuer with the Insolvency and Bankruptcy Board of India. The law emphasizes mainly on transparency, disclosure and fair valuation of the business. Primarily, the Valuer is accountable for adequate and fair valuation. The Valuers are bound with the Code of Conduct as well as the laws applicable in conducting valuation. Different categories of valuers have significant role to play in the fair valuation of the entire business assets of the company.

I am sure that the readers will find this book a very useful source of knowledge for their practical use while discharging their role as a valuer and will also be helpful for the Resolution Applicants, Financial Creditors, Committee of Creditors and Adjudicating authority as well as the Resolution Professional and other qualified persons who are interested to pass the examination and engage in the profession of valuation. Careful reading of the book will put the concerned in good stead and they will be in a position to act with sheer confidence as valuer while discharging their duties imposed by the law. The book will also serve as a guide for compliance managers, auditors, researchers and even students.

Non-compliance with the requirement towards valuation activities in the initial years will be reviewed by the regulators and judiciary and may cause penal action. Lack of knowledge and unfair practice to carry on valuation will be looked seriously and will be equally harmful to the valuer as well entire business community. Therefore the book has been designed to serve as a complete guide for valuers towards the valuation requirements and providing them adequate knowledge. The authors are complimented and appreciated for introducing the book on "Business Valuation in India - beyond the numbers".

**CS (Dr.) D.K. Jain**

Member, Editorial Advisory Board of Chartered Secretary.

Bill C-25, introduced to make changes to the governance framework, received the Royal Assent on Tuesday, May 1, 2018. This is considered as a major step toward making corporations more transparent, improving shareholder democracy and participation, and advance gender equality and diversity in Canada's boardrooms.

Bill C-25 is amending the four key federal marketplace laws: the Canada Business Corporations Act, the Canada Not-for-profit Corporations Act, the Canada Cooperatives Act and the Competition Act.

This new legislation is in line with the Government of Canada's commitment to equality and growth for a strong middle class.

Among other things, the Bill amends the Competition Act to expand the concept of affiliation to a broader range of business organizations and:

- reform some aspects of the process for electing directors of certain corporations and cooperatives;
- modernize communications between corporations or cooperatives and their shareholders or members;
- clarify that corporations and cooperatives are prohibited from issuing share certificates and warrants, in bearer form; and
- require certain corporations to place before the shareholders, at every annual meeting, information respecting diversity among directors and the members of senior management.

*A copy of the new Act is available at <http://www.parl.ca/DocumentViewer/en/42-1/bill/C-25/royal-assent>*

**Australian Securities Exchange (ASX): Consultation on fourth edition of Corporate Governance Principles and Recommendations**

With an aim to uphold high standards of corporate governance in Australia and to effectively address the emerging domestic and global issues in corporate governance, the ASX Corporate Governance Council (Council) recognises the need to regularly assess and update the Corporate Governance Principles and Recommendations. The Council was formulated by ASX with a primary role of developing and issuing principles-based recommendations on the corporate governance practices to be adopted by ASX listed entities.

Considering the above, the Council initiated public consultation to review and update the fourth edition of Corporate Governance Principles and Recommendations. The Council proposes to expand the number of recommendations from 29 in the third edition to 38 in the fourth edition. The new recommendations and their rationale are explained in the consultation paper which is available at: <https://www.asx.com.au/documents/asx-compliance/consultation-draft-cgc-4th-edition.pdf>

The mark-up version of the consultation draft against the third edition can be viewed at: <https://www.asx.com.au/documents/asx-compliance/mark-up-to-third-edition.pdf>

The Council requests submissions from all interested parties on the proposed changes to the Principles and Recommendations latest by Friday, 27 July 2018.

# Let Go- Be Easy While Busy

Contributed by Brahma Kumaris, Om Shanti Retreat Centre, Gurugram

**T**here is no denying the fact that today's environment at most work places has become quite demanding and challenging which makes everybody at work feel stressed or fatigued. An administrator feels more so because being at the helm of affairs makes it even more demanding for him or her. According to a study done on the pressures of working environment, it's found that in an increasingly demanding work-place full of deadlines, targets, and 'through put', the human aspects of work can be overlooked and undervalued. The emotional and psychological impact of work can be challenging, resultantly, it becomes extremely difficult to remain easy or relaxed.

We are all aware of time saving and time optimization techniques, we do maintain to-dos, we keep track of time and hours and try to keep its wastage to a minimum, but yet we are struggling to accommodate many of our activities in the available time. More than the time saving techniques, let us examine the factors that cause stress or create pressure and do not let us relax at work. Learning a few methods can make us more flexible and easygoing.

## Create a circle of Influence

Let us make two circles - circle of influence and circle of worry. Making a list of the things that we worry about the most and then deciding whether they are in our circle of influence or worry, will help us know what are the things we can control and what are the areas in which we could waste our time if we try to do so. Dealing with such issues need a little of patience along with the knowledge of what we can really do to have an influence on each of them in an effective way.

By determining which of these two circles is the centre, around which most of our time and energy revolves, we can discover a great deal about our level of positivity. Positive people focus on the things they can do something about. If necessary, they change their attitude. They are aware that they may not be able to change the circumstances but they can improve their inner attitude. This is what positive focusing is all about: being creative, thinking differently, being open to listening, being more understanding, more communicative and showing more solidarity. On the contrary, reactive people focus on the problems of the circle and on the circumstances about which they have no control. From this worrying, accusations, destructive criticism, feelings of blame, a reactive language and feelings of weakness and frustration can arise. They want others or the circumstances to change first and they will change later. They think that the problem is on the outside. The negative energy produced as a result of this approach, combined with the lack of attention to the areas in which they could do something to improve the situation, means that the area of influence decreases in size. They give power to what is external so that it dominates them. In other words, they think that change must come from outside towards the inside.

## Let Go

Micromanaging every aspect of your work can be exhausting. There's no way we can control everyone and everything in our office. Taking control is not necessarily a bad thing in all situations, but we certainly wouldn't want it to completely take over our thought process and relationships. There are a lot of reasons why people choose to control every aspect of their life. Whether it is from the fear of something bad happening or lack of trust in others - it is a behavior that needs to change so we can enjoy our work and workplace.

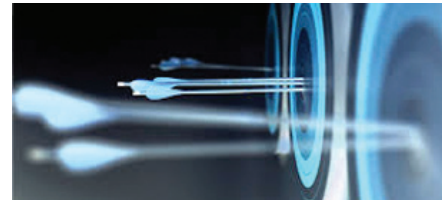
Try to find the core reason why we need to micromanage every aspect of our life. Is it because we have a fear of the unknown? Our business is the realm of things that we can directly influence. But often we are trying to manage someone else's business. When we're trying to control things outside of our own business, it's not going to go well. Thus, trying to do so will only mean to waste our time and burden our mind.

## Learn to Live in the Present

People tend to control things because they're afraid of what the future might hold, or perhaps they're scared to repeat a past mistake. But if we pay a little attention to the current moment at hand, we might know what is required of us right now!



[bkashaorc@gmail.com](mailto:bkashaorc@gmail.com)



Positive people focus on the things they can do something about. If necessary, they change their attitude. They are aware that they may not be able to change the circumstances but they can improve their inner attitude.



There's no way we can control everyone and everything in our office.

People tend to control things because they're afraid of what the future might hold.



To gain this power of present one has to be consciously there in the present moment or else the moment is gone before you even realize it.

Just think if you let go of control, will the future alter in a drastic, negative way? If the answer is no, then let it go. It's time to take charge of your life rather than letting your fears take control of you.

Eckhart Tolle wrote in his best-seller book *The Power of Now*, "Unease, anxiety, tension, stress, guilt, worry – all forms of fear are caused by too much future, and not enough presence. Resentment, grievances, sadness, bitterness and non-forgiveness- are also the result of ignoring the present". To gain this power of present one has to be consciously there in the present moment or else the moment is gone before you even realize it.

According to Reader's Digest, to fully be in the moment, try to do less. When we micromanage every aspect of our life, we tend to forget how to live because we have too many things on our plate, while we aren't able to accomplish all of those. Try to figure out what's most important. Do those tasks, and learn to delegate the rest, whenever possible.

#### Visualize

Just imagine what would happen if you didn't control the situation. Being cautious of the future can be a good thing but it is different from being fearful of the situations. You need to find a healthy balance. Question the validity of your fear when you feel like you're being a controlling freak. Let "Letting go" be a part of your vocabulary.

Just think if you let go of control, will the future alter in a drastic, negative way? If the answer is no, then let it go. It's time to take charge of your life rather than letting your fears take control of you. When we are able to trust that we are okay no matter the circumstances, we open ourselves up to possibilities. These are possibilities that weren't there when we attached ourselves to what we deemed was the "right" path. Often times, the path we so desperately want to be on, is not the most valuable or productive one. Letting go of control means more joy, freedom, peace, connection and support and a broader view of other possibilities.

#### Be Flexible

Often trying to control things makes us less flexible and more rigid. Being adaptable or flexible is a timelessly important skill as things are always changing at work – the economy is up and down, new competitors are popping up out of nowhere, coworkers come and go, and priorities shift. Being flexible is a key aspect of learning, to have less control over things, and ultimately how to enjoy life more. A benchmark of mental health is the ability to be flexible in behaviors and responses, and also in relationship to feelings and thoughts. Flexibility is also about being able to do things a little differently depending on who we are working with. Taking the time to learn how people like to work, and modifying our work style to accommodate them, makes a world of difference. Some people are auditory learners and prefer discussions while others are very visual and need power-point presentations. Some people are hands-off as long as you get your work done while others are hands on and want a daily report. We will find some colleagues respond better when we speak to them face-to-face while others prefer communication through emails. Once we determine what issues you can be more flexible with, we may be able to use that energy for something more meaningful instead.

#### Have Some Fun

The words 'work' and 'fun' shouldn't be antonymous. It is so important to have fun at work. Any one activity is not the purpose of life as a whole. Anything we enjoy, we are naturally going to do a better job at it and give more of ourselves to it. So, making our job something we look forward to, rather than simply a responsibility, is essential.

Admittedly, most of us could do with more of some activities and less of others. But the key to life isn't only getting the mix of hours and activities right. The difference between people who accomplish a lot in life and those who accomplish only a little is not that they spend their time in completely different ways. For the most part, they do more or less the same things. The difference is that they do them for different reasons. The same basic ingredients yield different outcomes. If we are lucky enough to find something good at and also love doing, we are less likely to think of it as "just work." Most successful people have in common that they enjoy what they do. Or they do what they enjoy. That doesn't mean that every day is a load of laughs from beginning to end, but that they derive enough happiness and satisfaction from their roles overall to see them through the tougher moments. If we enjoy what you do, even the longest of the days will not seem so rough. Work doesn't have to be all business, all the time.

Of course, we need to maintain our professionalism - but that doesn't mean we can't do it with a smile or with lightness and ease in mind. When we smile and laugh, others around you will do the same because it's contagious and your office will be an all-around happier place to be.



### Find Purpose of Life

Often people amble through their working lives feeling unmotivated and underappreciated, but they keep going. Even when they experience dissonance at work, many push it to the back of their mind continue to work. Some have their own sense of purpose, be that making money to support the family or getting through the 9 to 5 so they can begin their hobby. This is unsustainable; employees become unhappy, demotivated and stop fulfilling their potential. We need to pause to ask the question 'What is the purpose of each activity I do?' Giving your talent a sense of purpose at work can mean the difference between - doing a great job that brings a difference or striving to achieve a target or merely doing a job that has to be done anyways. Unless each activity we participate in purposefully moves us toward a larger goal, we'll never get anywhere. Studies consistently show that people who understand their lives in terms of some comprehensive aspirations feel happier and more fulfilled.

Basically, any purpose should have two characteristics. The first is that it should be our own purpose, one that gives us, as an individual, a sense of mastery and meaning. Howard Thurman, the early-20th century civil rights leader, once said: "Don't ask yourself what the world needs, ask yourself what makes you come alive, and do that. Because what the world needs is, people who have come alive." Whatever we do with the hours we have been given each day, and wherever we set your visions over the long arc of our life, we need to give yourself a chance to come alive. The second characteristic of our sense of purpose is that it should not be mainly about ourselves. Our larger purpose will not be primarily to boost our career or ensure our success or maximize our happiness. The novelist Frederick Buechner says that "you are called to the place where your deep gladness and the world's deep need meet."

### Spiritual Life Helps being Easy

Humans are spiritual beings. Understanding what our spirit wants and needs is a crucial part of living a well-balanced life. When we organize our spiritual life, we become clear on what our life is about. We become clear on what we stand for, and how we want to spend each day. We develop conviction for what really matters to us, and what is causing us uneasiness.

Take out just a few minutes of reflection, prayer or meditation every day. To know what our spirit is being fed feel deep peace and satisfaction is our responsibility.

Taking the time to learn how people like to work, and modifying our work style to accommodate them, makes a world of difference.



**Bent but not broken**

The difference between people who accomplish a lot in life and those who accomplish only a little is not that they spend their time in completely different ways.

## Attention PCS!

### Recognition to Company Secretary in Practice to conduct Internal Audit of Registrar and Share Transfer Agents (RTAs)

Company Secretaries have been authorised by Government, RBI, SEBI, IRDA and Stock Exchanges to issue various certifications and undertake audit of various market intermediaries.

In this direction, one more feather has been added to the cap of Company Secretaries by SEBI. SEBI has mandated that RTA has to undergo compulsory internal audit for which a PCS is authorised by SEBI to carry out the internal audit at par with other professionals. For details, you may visit the following link: [https://www.sebi.gov.in/sebi\\_data/attachdocs/apr-2018/1524228878012.pdf#pdfjs.action=download](https://www.sebi.gov.in/sebi_data/attachdocs/apr-2018/1524228878012.pdf#pdfjs.action=download)

### Recognition to Company Secretary to act as Customs Brokers

Para 5 of the Customs Brokers Licensing Regulations, 2018 (Notification No. 41/2018-Customs (N.T.) dated 14th May, 2018) provides that an individual applicant or in case the applicant is a firm, its partner or in the case of a company, its director or an authorised employee who may handle the Customs work shall — (i) be a graduate from a recognized University; and (ii) possess a professional degree such as Masters or equivalent degree in Accounting, Finance or Management, CA / CS / MBA / LLM / ACMA / FCMA or Diploma in Customs Clearance work from any Institutes or University recognised by the Government or is having at least two years' experience in transacting Customs Broker work as G-Card holder.



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June 05, 2018

*Dear Professional Colleagues,*

***Sub.: Celebration of Golden Jubilee Year PCS Day (June 15, 2018)***

While the Institute is celebrating its Golden Jubilee Year in full fervor, the year has bestowed us with another landmark moment where we stand together to celebrate the 30th PCS Day this 2018. The 15th day of June, 1988 marked the beginning of an era for the Institute of Company Secretaries of India as well as its members when the Company Secretaries in Practice were accorded recognition for Certifying the Annual Returns under the erstwhile Companies Act, 1956.

Each day is bringing in newer opportunities and challenges, and with extremely heightened expectations from this brigade of professionals in general and the practicing members in particular, the time, the day and the celebration seems apt to challenge our limits, push ourselves beyond our comfort zones and stand at par with professionals across the globe and be the best in what we do.

On Friday, the 15th of June, 2018, let's celebrate 'Golden Jubilee Year PCS Day' throughout the country and participate in:

1.	Interactive Meets at various Regional Councils, Chapters and Study Circles
2.	Campus Recruitment of Articles for PCS
3.	Learning Programmes

The deliberations would cover:

i.	Existing Recognitions and Emerging Areas of Practice for PCS
ii.	Recent Developments with respect to GST, SEBI, etc.
iii.	Peer Review Mechanism and its benefits for a PCS

Members attending the programmes shall be eligible for grant of programme credit hours.

Let's celebrate this day with greater zeal and vigor.

Regards

**CS Makarand Lele**  
President, ICSI

**CS Vineet K Chaudhary**  
Council Member, ICSI &  
Chairman, PCS Committee

1. **GST surpasses Rs 1 trillion in April- Finance Minister**
  - The GST revenue collection crossed Rs 1 trillion in April, the highest in a month since the new indirect tax was rolled out in July last year
  - As many as 69.5 per cent of assessee filed summary input-output returns in April, against 64.61 per cent in the previous month
  - The mop-up at Rs 1.03 trillion far exceeded the Rs 898.8 billion average monthly collections for the first eight months after the GST was introduced
2. **GST Council unveils new, simplified return filing process**
  - GST Council unveiled a new simplified return that would require a taxpayer to file only one return every month and set a period of six months for the transition to take place
  - It will take about six months for GSTN to prepare for it, so for that period the current arrangement of GSTR3B and GSTR 1 will continue
  - In the transition phase, which is after six months of the return being prepared, there will be a separate column for the dealer to claim provisional credit based on his own calculation
3. **Companies get scrutiny notices for mismatch in GST returns**
  - GST officers have started sending scrutiny notices to companies whose tax payment did not match the final sales return, after revenue authorities detected underpayment of GST by about 34 per cent
  - Also, companies whose final sales return GSTR-1 did not match GSTR-2A, which is a purchase return auto-generated by system from his seller's return, have also received scrutiny notices.
4. **Ordering food on train will pinch you a bit more: AAR**
  - Supply of food and beverages in trains will face goods and services tax as applicable on such items and not the concessional rate of 5% as specified by the government through a circular, since a train is a medium of transport and cannot be termed restaurant, eating joint, mess or canteen, Delhi AAR said in a decision
5. **Solar power plant EPC to attract 18% GST: AAR**
  - In a ruling that could spike the cost of setting up solar power plants, the Authority for Advance Ruling (AAR) for GST in Maharashtra said that engineering, procurement and construction (EPC) activities will be considered as 'work contract' and liable to be taxed at 18%
6. **All businesses covered by RCM to register for GST: AAR**
  - A business is required to register under GST even if it qualifies to be exempted according to the GST Act, but has liability to collect tax under the reverse charge mechanism (RCM) - AAR on GST in Delhi said in a ruling
7. **Expedite GST practitioners' registration: CBIC chief**
  - Several indirect tax experts find that they still haven't been approved as GST practitioners, despite having applied for registration months ago via the GST portal
8. **28% GST to be levied on e-rickshaw tyres: AAR**
  - In this backdrop, the chairperson of the Central Board of Indirect Taxes and Customs (CBIC — earlier known as CBEC), recently wrote to officials to expedite the process
9. **BSNL partners SAP to boost GST compliance in rural India**
  - State-owned telecom operator BSNL signed a memorandum of understanding (MoU) with enterprise solutions provider SAP to jointly offer innovative GST solutions to enterprises across India.
  - The partnership is directed at realising the full potential of GST by increasing compliance on the back of BSNL's country-wide reach and SAP's expertise in providing robust technology offerings.
10. **Malaysia's new government says GST to be effectively scrapped from June 1**
  - Malaysia's new government said it would reduce goods and services tax to zero from June 1, effectively abolishing it, a move that is likely to spur spending in the Southeast Asian nation but put pressure on its fiscal position.
11. **Coaching centres for entrance exams liable to 18% GST: AAR**
  - Coaching centres providing tuition to prepare students for entrance examination are liable to pay 18 per cent GST, according to the Authority for Advance Rulings
12. **Government extends deadline for filing April GSTR-3B by 2 days till May 22**
  - The government has extended the due date for filing GST summary sales returns for April by two days till May 22, 2018
13. **GST Council asks Centre, states to quickly set up appellate authorities**
  - The GST Council has asked the Centre and states to expedite setting up of appellate authorities for aggrieved entities to appeal against orders of the Authority for Advance Rulings
  - With AARs in different states started giving rulings since March, it has become imperative for the Centre as well as states to set up the Appellate Authority for Advance Ruling
  - So far only 12 states, including West Bengal, Gujarat, Madhya Pradesh, Rajasthan, Tamil Nadu and Uttar Pradesh, have issued notifications for setting up AAARs
14. **Catering services provided to offices and industry canteens to attract 18% GST**
  - Clearing the cloud on the rate of GST for supply of



food services to canteens at offices and factories, the Gujarat Authority for Advance Ruling (AAR) has said such services would attract 18% GST and not 5% that the industry was normally following

- The AAR has opined that catering services provided to offices and industry canteens, (which is supply of food services to canteens at offices/ factories) would be taxable at the rate of 18% under the category of outdoor catering in terms of Sr.7(v) of Notification no. 11/2017 - Central Tax (Rate) dated 28.06.2017.

#### 15. Civil Aviation Ministry to urge Finance Ministry to bring ATF under GST

- To contain the rise in jet fuel prices and its cascading impact on air ticket prices, a proposal will be made to the Ministry of Finance to bring air turbine fuel (ATF) under the ambit of GST to contain the rise in jet fuel cost due to high global crude oil prices- Civil Aviation Secretary

#### 16. Crypto currency might get classified as intangible goods with 18% GST

- Indian government is considering levying 18% GST on crypto currency trading that would put virtual currencies under intangible goods category
- This proposal might get applied retroactively from July

1, 2017, when GST came into action

#### 17. GST to be levied on goods stored in customs warehouse only on final clearance: CBIC

- The Central Board of Indirect Taxes and Customs (CBIC) has asked its field offices to levy GST on goods in customs warehouse only at the time of final clearance
- The CBIC said that the Customs Tariff Act has been amended with effect from March 31, 2018, to state that the valuation for the purpose of levy of Integrated GST (IGST) on warehoused imported goods at the time of clearance for home consumption would be either the transaction value or valuation done at the time of filing the 'into-bond' bill of entry, whichever is higher

#### 18. No GST on support services to farmers: Finance Ministry

- The finance ministry clarified that renting or leasing of land by farmers for agriculture, forestry, fishing or animal husbandry is exempt from the GST
- Clarifying on the applicability of GST on farmers, the ministry said support services to agriculture, forestry, fishing or animal husbandry are exempt from GST
- Exempted support services to agriculture include renting or leasing of vacant land with or without a structure incidental to its use

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“To be a global leader in promoting good corporate governance”

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**Mission**

“To develop high calibre professionals facilitating good corporate governance”

# National Conclave on Ethics & Governance

Theme : Professional Ethics - Need of the Hour

Friday & Saturday | July 13-14, 2018

**Fortune Select Grand Ridge**  
**Shilparamam, Tiruchanoor Road, Tirupati- 517 501**

(Programme commences on 13<sup>th</sup> July 2018 at 11:00 am and concludes at 14<sup>th</sup> July 2018 at 4:00 pm)

Programme  
Credit Hours :  
8 PCH  
16 PDP

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**HOST : Southern India Regional Council (SIRC) of ICSI**

# तस्मादसक्तः सततं कार्यं कर्म समाचर । असक्तो ह्याचरन्कर्म परमाप्नोति पूरुषः ॥

(Do thy duty perfectly, without care for the results,  
for he who does his duty disinterestedly attains the Supreme.)

**E**thics and governance may find different meanings as for the dictionary is concerned, but if history is to be believed, both of them cannot survive without each other. An organisation devoid of good professional ethics can seldom be classified as a well-governed one and a strong governance culture is a promoter of ethical conduct. That said and done, each nation and more so, each organisation has its own set of ethics and values which it holds close to its inherent self. However, at the same time, on an in-depth analysis one finds numerous similarities even across distinguished boundaries.

From mere perfunctory adherence in the form of confirming compliance, the need to ensure substance over form as the new norm of compliance is upon all of us. Every professional is compelled to reflect, and renew the pledge to ponder over the past, glim at the present and delve into the future with heightened responsibilities. The law of the land being rapidly transformed to give ample room for carrots for facilitating compliance; is being equitably loaded with sticks to check deviations; with the latter exceeding the former on occasions more than one. The institution of media, too, has transformed from merely a reporter of events to analysts of change and influencers of policy. Information Technology, as well, has imbibed myriad dimensions making it imperative for professionals of all hues to think on their feet and respond with alacrity and astuteness.

Greater professional recognitions call for augmented responsibilities demanding consciousness of higher order and improved delivery. While conformity to ethics in individual or corporate action is regarded as a precondition for sustenance; in the Indian mainland, having a proud civilization history and background, the practice of Dharma in thought, word and action has been recognised and encouraged over several centuries of our existence. This facet of our ancient ethos seems more relevant now than ever before as we free ourselves from the shackles of colonial thought and behaviour.

As an Institute focussing its efforts and energies towards making a difference in the governance culture of the nation and reiterating words of the Taittiriya Upanishad, सत्यं वद । धर्मं चर । as its motto, the significance of ethics in workplace and beyond is well-realised and understood.

In furtherance of its vision and mission, and to sensitize the corporates towards their heightened responsibility towards ethical conduct, the Institute of Company Secretaries of India invites you to the National Conclave on Ethics and Governance on the 13<sup>th</sup> and 14<sup>th</sup> July, 2018 at Tirupati, Andhra Pradesh on the theme Professional Ethics - Need of the Hour. The event is hosted by the Southern Regional Council (SIRC) of ICSI.

The event is an attempt of the Institute to reiterate the significance of ethical conduct and support the nation as it sets foot into becoming one of the best governed nations of the world!!!

Looking forward to a meeting at Tirupati.

CS MAKARAND LELE  
PRESIDENT, THE ICSI



## COVERAGE

- Ethics and Values: Rule of Law and Law of Dharma
- Good governance & Professional Responsibility
- Tone from the Top: Ethical leadership
- Ease of Doing Business

**SPEAKERS** : Eminent speakers with comprehensive exposure to the practical aspects of the topics will address and interact with the participants.

## KEY TAKEAWAYS

- Enhance value driven professional services
- Commitment to Integrity
- Update and Sharpen technical and professional skills
- Ethical leadership
- Dealing with ethical dilemmas

**PARTICIPANTS** : Company Secretaries and other Professionals with Secretarial, Legal and Management backgrounds shall be benefitted.

Delegate Fee (inclusive of GST)	
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Students	₹ 3500
Early Bird Discount: ₹ 500/- Upto 30 <sup>th</sup> June, 2018	

## REGISTRATION PROCEDURE :

Delegates are requested to register for the conference by visiting the link <https://www.icsi.in/student/DelegateRegistration/tabid/137/ctl/ViewEventDetails/mid/454/EventId/53/Default.aspx>

Delegate Registration only through Online Mode. Please note that payments are not accepted through demand draft, cheque, cash, electronic transfer, etc. The link provided above will also give option for hotel accommodation. The brief of hotel available is given as under :

Sl. No.	Name of the Hotels	Room Tariff	
		Single Occupancy	Double Occupancy
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2	Fortune Kences, Opp. APSRTC Bus Terminal, Tirupati - 517 501.	2600 + Tax	3000 + Tax
3	Sarovar Premiere, Upadhyaya Nagar, Karakambadi Road, Tirupati – 517 507	3900	4400
4	Pai Viceroy, 18-1-5/6, Ramachandra Nagar, Near KapilaTeertha, Tirumala Bypass Road, Tirupati	3000 (Superior Room)	3500
5	Hotel Regalia, Ramanuja Circle, Tirupati-517 501	2999	–
6	The Bhimas Residency, Near Railway Over Bridge, Reniguta Road, Tirupati-517 501	3200	3500
7	Ramee Questline Hotel, Karakambadi Road, Tirupati – 517 507.	3500 Club Room	3500
8	Hotel Bhimas Paradise, 33-37, Renigunta Road, Tirupati – 517 501.	2000	2200

\*Venue of the programme

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## About ICSI RVO

The field of valuation, as an area of activity is still untapped, demanding the presence of experts possessing the right knowledge and capabilities which brings upon the realisation that we Company Secretaries as professionals in India can provide the much needed support both as members of ICSI as well as by forming a significantly strong army of Valuation members.

In order to enable the members of ICSI, as well as other professionals and eligible persons to register as Registered Valuers, the ICSI on November 22, 2017 incorporated a not-for-profit private limited company under Section 8 of the Companies Act, 2013, by the name **ICSI Registered Valuers Organisation (ICSI RVO)**.

ICSI RVO intends to enrol, educate, train and promote the profession of Registered Valuers as per the Companies (Registered Valuers and Valuation) Rules, 2017.



**"You cannot connect dots looking forward, but you can connect dots looking backwards."**

~ Steve Jobs

The concept of 'Registered Valuer' was introduced under section 247 of the Companies Act, 2013 to carry out valuation in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities, as per the Companies (Registered Valuers and Valuation) Rules, 2017 notified by MCA on 18<sup>th</sup> October, 2017. The Rules will lead to setting-up of Valuation Standards which will further improve transparency and governance and, while bringing about a clarity regarding various aspect of valuation will have a major impact on the industry, professionals, stakeholders and the government as well. Needless to say, the requirement of Registered Valuers will definitely enhance professional opportunities for both the Company Secretaries as well as other professionals.

Some of the areas under Companies Act, 2013 requiring valuation include:



### **About the Institute of Company Secretaries of India (ICSI):**

ICSI is a statutory body constituted under the Company Secretaries Act, 1980 to regulate and develop the profession of Company Secretaries. The Institute has been contributing in all initiatives of Govt. of India having potential to excel socio-economic growth of the nation and in one such initiative has delved into developing Registered Valuers by establishing its wholly owned subsidiary **ICSI Registered Valuers Organisation (ICSI RVO)**.



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Any individual willing to register himself as a Valuer Member may send an application in the form available at the website : [www.icsirvo.in](http://www.icsirvo.in)

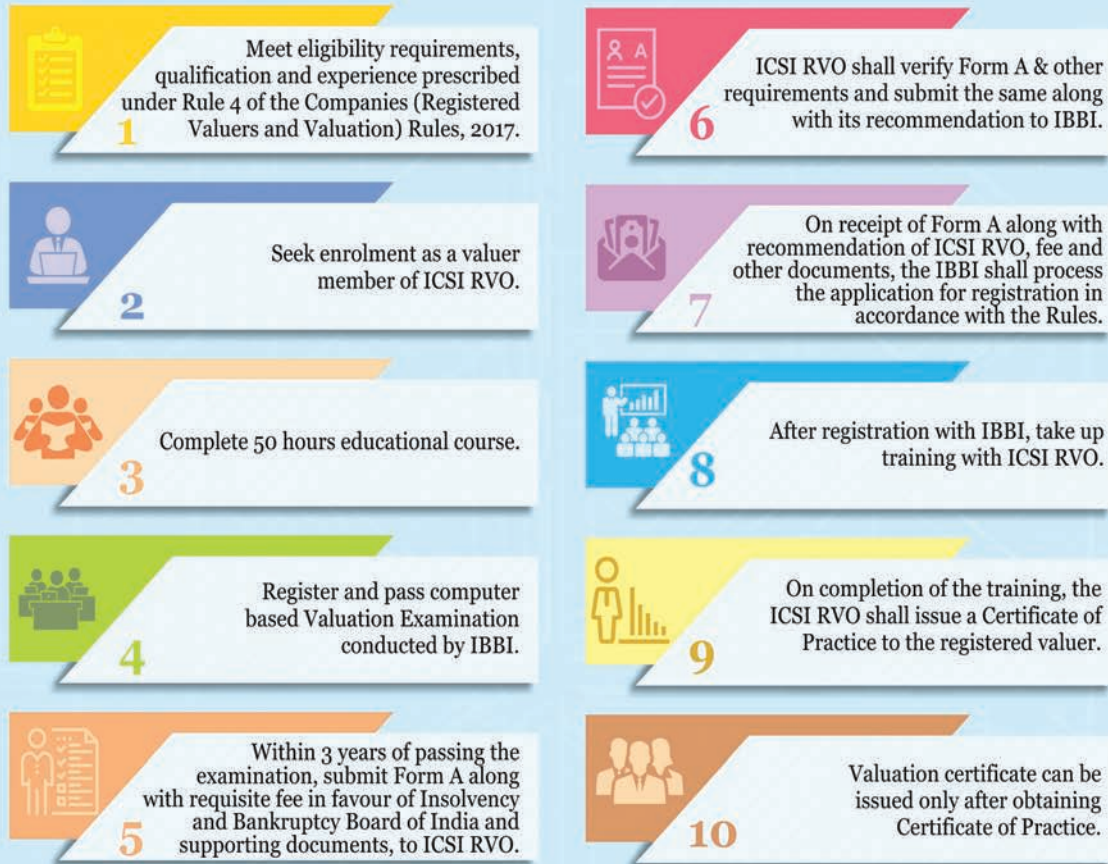
The form shall be accompanied by a Demand Draft favouring ICSI Registered Valuers Organisation payable at New Delhi.

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#### For further information contact:

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- Property Plant and Equipment Valuation
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## Our Key Valuation Clients



## Our Gamut of Services

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